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EDITORIAL COMMENT

St. Louis Consolidation Scheme to be Presented to Voters

Our readers will recall that in November, 1924, the people of Missouri adopted a constitutional amendment providing for the creation of a board of freeholders for the purpose of devising a plan of consolidating the city of St. Louis and St. Louis county. Half of the freeholders were from the city and half from the county, and it was their function to prepare a plan for submission to the voters. This plan was to take one of three general lines. It might consolidate the territory into the city of St. Louis; it might extend the boundaries of the county to embrace the city, thus restoring dual city and county government in St. Louis proper; or it might enlarge the present boundaries of the city by annexation of part of the territory of the county, leaving the remainder as at present.

The board has been meeting since June, 1925, but the differences between the city and the county seemed irreconcilable. In April a proposal sponsored by the nine city members providing for a complete consolidation of the city and county under the city government was defeated by the solid vote of the county representatives. The county members preferred the plan of extending the county limits to include St. Louis but the city members objected that this would be a return to the old and wasteful condition of overlapping governments.

Under the law, the life of the board of freeholders was limited to one year. Ten minutes before their term expired the proposal favored by the city representatives was filed. This was made possible by the vote of a single county member who dislikes the city scheme but believed that the board should not die without reporting something. This member will doubtless oppose the plan at the polls, and inasmuch as it must be approved by the voters of the county as well as of the city, its fate is doubtful.

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Commutation Rate Cases

Two railroads have for some time been seeking substantial increases in commutation rates to the city of New York. The public service commission of the state of New York and the transit commission are now holding joint hearings in one of the cases. Important questions of fact and policy are involved, which have important bearing on future commutation rate adjustments in all cities. The companies are presenting their cases on the general assumption that it costs just as much to carry a commuter as it does a regular passenger, and that therefore, the rates charged for commutation should be judged on the basis of the average cost per passenger (or passenger mile). This view is worked out somewhat differently by the two companies, but it is fundamental to both cases.

The city of New York and the commuters, who are opposing the increases, draw a sharp distinction and insist that it costs much less to carry a commuter than an ordinary passenger. They insist that there is a differential which must be established by concrete investigation and applied to the cost, apportioned between the two classes of service. The reason for such differential is due principally to the great difference in density of traffic, which has been rapidly increasing in the commutation business and effects lower unit costs per passenger. The companies' theory would disregard altogether the influence of density upon costs, and would keep from the commuters the bulk of the benefit of cost reduction due to the growth of that very traffic. This point has never been fundamentally worked out in any case, so that the New York decision will be of extensive general interest wherever questions arise as to the propriety of commutation rates and their proper basis of determination. J. B.

Minneapolis Votes on New Charter

We go to press too early to report the result of the election in Minneapolis on June 21 on the proposed council-manager charter, which after several years of travail gained the right to be passed upon by the people, although in a form somewhat modified over that originally discussed. The charter follows the standard plan in many respects. A council of twelve aldermen is to be elected at large by proportional representation. The mayor, who will be a member and the presiding officer of the council, will also be elected at large although his duties are for the most part ceremonial.

The manager is given a free hand in the appointment and the removal of department heads including the department of civil service. Civil service rules are to be proposed by the director and adopted as an ordinance by the council.

The important deviation from standard form, and one which is questionable, consists in the establishment of a board of financial review of five members elected at large by proportional representation. This body has no power of initiation but, once it has been set in motion, it is superior to the council in respect to tax levies, appropriations, and bond issues.

Upon petition of one hundred taxpayers the board must hold public hearings on any bond issue, tax levy or appropriation and after such hearing may decrease or eliminate entirely such bond issue, tax levy or appropriation. The board's control extends to the school and library boards (also to be elected by P.R.) as well, and its decision in each case is final except as it may be changed by public referendum. There is thus set up an agency, outside the council and virtually master of it, designed to promote economy, if not efficiency, in Minneapolis government.

If the charter, excellent in other respects, is adopted by the people this division of authority will be costly rather than economical. There is no sound reason to suppose that in the long run the board of financial review will be any wiser or more high minded than the city council. The ultimate result will be either to provide a means of interfering with the council's plans for the foundation and execution of which it should alone be responsible, or to furnish an encouragement to the council towards extravagance, since it will be possible to pass the buck to a board of review.

Alternative provisions are set up for the election of the council, the board of financial review, and the school and library boards for use if the courts declare P. R. to be unconstitutional.

Living Up to the City Plan

City plans are like budgets, no matter how excellent and complete they are, they mean nothing unless they guide conduct. They are programs looking into the future; not to be lightly adopted, but once adopted to be adhered to in all essential details until changing conditions demonstrate the necessity of revision.

Since hindsight is better than foresight, the passing years may reveal ways in which the city plan could have been improved; but a reasonably good plan is infinitely better than no plan at all and perfection is illusive in a finite world.

Because the courts have looked askance on measures appearing to infringe private property the enforcement of the city plan has had until recently to rely upon an appeal to reason. Accordingly city planners have been slow in attempts to maintain the integrity of the plan at law. The selfish interest of owners and developers often runs counter to public good and as long as legal compulsion was lacking, as long indeed as prevailing judicial opinion favored the selfish individual, so long the fulfillment of the city plan as a unified plan remained a pious hope. It seems, however, that the time has come when city planners can rely upon a more sympathetic attitude on the part of the courts.

It was natural that zoning, which is so reasonable in practice, but which at first seemed to many to cut across private rights, should furnish the field on which the issue of private interest versus community development should be fought out; and Mr. Williams, writing in this number of the REVIEW, points out how New York state has extended the police power and the procedure of zoning to the enforcement of the city plan. By virtue of the laws passed by the recent legislature, buildings on streets not on the official map are prohibited; plats which contain new streets cannot be filed without approval by the planning board; and, except in special cases, buildings in the beds of mapped streets are forbidden. Obviously, broad prohibitions may work injustice in particular cases. Therefore the new planning laws take advantage of the device, which has proven so efficacious in zoning, known as the board of appeals. By this means injustices which otherwise would invalidate the purpose as well as the legality of the whole are ironed out.

The New York laws follow the proposals made by Mr. Williams in the NATIONAL MUNICIPAL REVIEW for July, 1921. In invoking the police power to protect mapped streets, the New York scheme differs from that which has been advocated and used in Massachusetts. The latter relies upon the state's power of eminent domain; but to protect mapped streets it may be necessary to condemn an easement for the future street to prevent building in its bed between the time it is planned and the time it is constructed. To some this seems to involve unnecessary expense, for the land must be condemned later when the street is to be built, but Massachusetts has been fearful of the courts and doubtful that the police power can be stretched to meet the situation. She has therefore preferred to rely upon the probability that few owners of land condemned for streets will show damages in advance of street construction.

A serious objection has been that the theory of condemnation disregards the broad social purpose of the city plan and places its whole operation on too narrow a basis. Undoubtedly the zoning cases are educating the courts and certainly the time has come, in some jurisdictions at least, when the enforcement of the city plan under the

police power can be safely submitted to them.

In what department of the city government authority to enforce the plan should rest, is still debatable. As George B. Ford recently pointed out in an address before the American Society of Civil Engineers, the Ohio planning law and the Cincinnati charter give practical control to the planning commission. The commission makes the plan and no departure therefrom is possible except by a two-thirds vote of the city council.[1] Under the New York laws the plan receives its legal force from the legislative body, but such body may delegate to the planning board the power of veto over plats showing new streets.

From the standpoint of political science the chief question relates to the division of power present in the Ohio scheme, but absent in the New York system.

In times past it has been common to set up independent or semi-independent boards to exercise certain functions, particularly new functions. The cause was usually distrust of the city government plus a feeling that the particular work was so important as to justify a separate authority to handle it. The abstract arguments of that period seemed reasonable and convincing, and they were much the same arguments as are being made for semi-independent planning boards to-day. Nevertheless, the results were generally disappointing. Subdivision of power has been confusing to the voter and a protection to the politician. Activities were not taken "out of politics" simply by taking them away from the city council.

As the legal position of city planning becomes more and more established, those who have to do with municipal charters will be compelled to decide whether the planning commission should be made an exception to the sound general principle of unification of power or should continue solely in an advisory capacity. Independent water boards, police boards, and the like, seemed reasonable a generation ago. Few advocates are left to champion them to-day.

[1] The Ohio laws make no provision for protecting mapped streets from encroachment in advance of street construction.

NEW YORK HOUSING LAW TO AID WAGE EARNERS

BY GEORGE GOVE

Director, New York Bureau of Housing and Regional Planning

The state's power of condemnation and tax exemption has been summoned to the relief of 70 per cent of the city's population. :: ::

AFTER more than a half century of agitation against the evils of the slum, New York is taking its first practical step toward their abolition. One of the most important measures enacted in the closing days of the legislative session was the state housing law designed to enable private enterprise to build tenements that may be offered at rentals within the means of wage earners. By means of this legislation it is expected that an effective program will be undertaken for permanent housing relief: first, by the gradual reconstruction of the worst tenement areas in cities; and second, by the adoption of a uniform method of providing adequate housing for families of limited income which commercial enterprise cannot serve, applicable not only to the worst tenement areas but as well to any part of the city or cities in which the need is manifest.

AN OLD EVIL

The permanent features of the housing problem in New York have been recognized for more than half a century. The underlying population in cities always has been and is now, inadequately housed. Since the middle of the nineteenth century investigation after investigation has been made by legislative and municipal commissions and by reform organizations. Through all these years succeeding legislatures have attempted to deal with the problem by placing added restrictions on commercial builders in an attempt to improve housing standards. But restrictive legislation has failed to discover a remedy. Restrictive laws have been essential as a preventive. They have established minimum standards for housing, but they have not produced new houses. Restrictive legislation has been directed wholly toward the amelioration of conditions which have been reported from the time of the first investigations in New York City and Brooklyn in 1857 through succeeding reports of the Council of Hygiene and Public Health in 1865, the Tenement House Commissions of 1884, 1894, 1900 to the present day. Through these reports there runs the continuous description of housing conditions as vile as are to be found anywhere in the world,—of filth, congestion, deterioration, degradation, dark rooms, inadequate sanitary provisions, high rents and exorbitant profits. The larger the city the more serious has been its housing problem. With higher land values have come higher rents, higher taxes, higher costs of transportation, all making it more and more impossible to provide housing at rentals within the range of average incomes.

The housing emergency which followed the war was but an intensification of a permanent underlying problem. For the time being, due to increasing rents, the eviction of tenants

and the downward pressure exerted by families all bidding for relatively low rental properties, it became necessary to restrict the rental return on residential property; but it was at all times understood that the emergency legislation was only a palliative and that it offered no constructive solution for the abuses which it was designed to curb.

EXTRAORDINARY LIMITATIONS AND POWERS TO HOUSING CORPORATIONS

It is believed that the recently enacted housing law contains the essential elements of a sound constructive program. The state housing law declares that: "Congestion and insanitary housing conditions which exist in certain areas of the state in low priced dwellings are a menace to the health, safety, morals, welfare and reasonable comfort of the citizens of the state." It declares further that: "Correction of these conditions in such areas being now otherwise impossible, it is essential that provision be made for the investment of private funds at low interest rates and acquisition at fair prices of adequate parcels of land, the gradual demolition of existing insanitary and unsafe housing and the construction of new housing facilities under public supervision in accord with proper standards of sanitation and safety." The State Board of Housing is created to select and to approve areas in which construction may be undertaken by limited dividend corporations formed under the act for the execution of projects. The maximum rentals to be charged in the dwellings constructed range from $9.00 to $12.50 per room per month according to location.

The actual building will be undertaken by private capital organized into limited dividend companies of which two kinds may be created under the law,—so-called "public" and "private" limited dividend housing companies. Both are required to provide one-third of the actual cost of any operation by the issuance of corporate stock. The remaining two-thirds of the cost is to be met by first mortgage at an annual interest rate not in excess of 5 per cent. The public limited dividend housing companies must limit their dividends to 6 per cent and provide for the amortization of their bonded indebtedness as may be required by the state board of housing. They may acquire a reserve equal to 12 per cent of the outstanding capital stock, but they are not permitted to transfer their net earnings to surplus in larger amount than is approved by the board of housing. Furthermore, such public limited dividend companies may not voluntarily dissolve without the consent of the board and they may not alienate any property acquired under the terms of the act except to another limited dividend housing company which shall similarly have been formed with the approval of the board. All gross receipts in excess of the allowed fixed charges which include transfers to reserve funds, must be returned to the tenants of the buildings in the form of reduced rents.

In return for these limitations the public limited dividend companies are granted the right of condemnation for acquisition at reasonable prices of such parcels of land as may be necessary to the execution of approved projects. Any municipality in which a housing project shall be undertaken before January 1, 1937, is authorized to exempt both land and buildings wholly or in part from local taxation. According to the act public limited dividend companies are exempt from corporate and other forms of state taxes; their bonds and mortgages are declared to be the instrumentalities of

the state, issued for a public purpose, and exempted from taxation, together with the interest on them.

The private limited dividend companies are less restricted in their operations. They are not granted the right of condemnation and accordingly they are not restricted in the sale of their properties. Dividends on their stock are likewise fixed at 6 per cent. Their securities, though declared not to be instrumentalities of the state are nevertheless exempt from state taxation both as to principal and interest. As in the case of public limited dividend companies the buildings and land acquired by the private limited dividend companies may be exempted by municipalities from local taxation so long as such companies own and manage their properties.

The proposed projects of both public and private limited dividend companies must be approved by the housing board after submission of complete plans in such form and with such assurances as the board may prescribe.

TWO-THIRDS OF FAMILIES NEED RELIEF

The imperative need for some form of permanent housing relief and the impossibility of adequate relief through the operation of unaided commercial enterprise were most clearly set forth in the report which the housing commission presented to the legislature in February along with its concrete proposals. Though the measure as finally passed differs in important respects from the one presented by the commission and sponsored by the Governor, the commission's report remains its inspiration and its constitutional justification. That report demonstrated that with all of the periodic investigations since the middle of the nineteenth century neither the awakening public conscience nor housing legislation have brought any substantial housing relief to the majority of urban families. The report showed that no marked improvement had come in the past 25 years through the demolition of old insanitary dwellings which had been condemned as unfit for human habitation in 1901 when the present tenement house law was enacted. It cited 23 buildings in New York City which had been reported as a public menace in 1885 and showed that 14 of these buildings are still occupied wholly or partially for residential purposes. It showed that at the prevailing rate of demolition it would be 138 years before the last of the insanitary, "old law" houses are demolished.

The futility of relying further on unaided commercial enterprise for a solution was made clear by the report of new construction in recent years. Although the new construction from October, 1920, to October, 1925, had increased the volume of housing by more than 20 per cent, yet conditions for the majority of families in New York City had not improved. For more than two-thirds of the families new construction had brought no relief. The reason for this was apparent in the record of rents charged. Of the total number of apartments constructed by commercial builders in 1924, only 2.6 per cent rented for less than $12.50 per room per month. In previous reports the commission had shown that more than two-thirds of the families in New York City have incomes of less than $2,500 a year. Approximately one-fourth of the families have incomes between $2,500 and $5,000. Less than one-tenth of the families have incomes above $5,000 a year. The wage-earning population is almost entirely included within the class earning less than $2,500 a year. These families can pay not more than $600 a year for rent. Their average rental limit is less than $500 a year. No housing accommoda-

tion that rents for more than $12.50 per room per month is available to this vast underlying population of the city. At that rate only the favored families in this group may be supplied. For 70 per cent of all the families of the city, commercial enterprise has supplied less than 3 per cent of the total new construction in the year 1924; 97 per cent of the total construction is available only to that 30 per cent of all the families of the city with annual incomes in excess of $2,500. As shown by this record, commercial enterprise, in multi-family construction, provides for not more than 30 per cent of the population. The commission also showed that in one and two-family construction the costs either under purchase or rental place an undue burden on the income of any family earning less than $2,500 per annum.

POSSIBLE ECONOMIES

When private building for profit satisfies the housing demand for 30 per cent of the population, further construction becomes unprofitable. It continues only so long as the market is "favorable" or until evidence of surplus is discovered in a downward trend in the higher rentals. Then the lending agencies become conservative and private building stops. The cycle revolves slowly. Even this limited surplus is infrequent. And this small and occasional surplus, derived from housing construction intended to satisfy the demand of only 30 per cent of the population, represents all that commercial enterprise ever provides to meet the constantly increasing needs of 70 per cent of the population. The average family must be content with leftovers—and there are never enough of these to permit adequate housing for more than half of the population. The commission declared that, "A system of producing houses which is geared to satisfy less than one-third of the current requirements of society must be accounted a social failure. It may function satisfactorily in its limited field, but it must be supplemented by some other producing agency if the social need for housing is ever to be satisfied.

The commission's proposals, now enacted into law, recognize the necessity of introducing practical economies throughout the entire housing operation, beginning with the acquisition of land, through the purchase of materials, construction of buildings and the management of the rental properties. Analysis of housing costs has shown that the major economies are to be found in the reduction of the interest rate and the elimination of speculative profit in land. The interest charges represent more than half of the total current expenses of housing. At rates paid by commercial enterprise, 54 cents out of every dollar paid for rent goes for the payment of interest charges. The ordinary commercial rates of interest average 9 per cent—probably more rather than less. A reduction of this rate by 1 per cent will represent a possible rental reduction of one dollar per room per month. Under the plan proposed by the commission, the prevailing rates of interest may be reduced 3 per cent or more. Further economies will be obtained in the reduction of the annual rate of amortization, through tax exemption and possible reduction in the cost of land by exercise of condemnation.

The possibilities of this program are apparent. Commercial enterprise now takes care of the needs of 30 per cent of the population. The needs of the 70 per cent do not concern commercial enterprise. In the jargon of the economist they do not constitute part of the "effective demand." Pressing as their needs may be, these families

cannot afford to buy good houses. Under this program a large part of this 70 per cent may be supplied. There will remain some for whom direct provision cannot be made economically; but the average worker, the man with an income of $1,400 to $1,800, may be decently housed. It should no longer be possible to say that the majority of the families of the city are, have been and will continue to be inadequately housed.

MUNICIPAL LIGHT AND POWER IN TACOMA

BY FRED S. SHOEMAKER

Tacoma has had a municipal electric plant for 23 years. Natural advantages plus good management have brought power rates as low as .45 cents per kilowatt; residence cooking rates are 1 cent per kilowatt and heating rates 1/2 cent. :: :: :: :: :: :: :: ::

MUNICIPAL ownership of electric light and power has thus far proved eminently satisfactory to the citizens of Tacoma. In 1925 a plant valued at a little less than $6,500,000 produced a net income of over $844,000 and at the same time furnished light, heat and power at very low cost.

Municipal ownership is not a new thing in Tacoma. Constant trouble with a privately owned company, largely due to the rapid growth of the city and the inability of the company to render service, led to an election in 1893, in which it was decided that the city should purchase both the light and the water plants. This was done at a cost of $1,750,000. The electric plant was improved a good deal by the city, but proved inadequate to meet the growing demands made upon it. In 1897 the city began purchasing current from private companies and was obliged to continue this policy for a period of fifteen years.

In 1909 the city voted to erect a hydro-electric plant on the Nisqually River at La Grande about forty miles from the city. The river is fed by a glacier on Mt. Tacoma and the site has proved very satisfactory. Construction was finished in 1912 and the city became the owner of a plant with a capacity of 24,000 kilowatts, or 32,000 horse power, at a cost, including transmission lines and sub-station, of $2,354,000, or about $73 per horse power.

Rapid increase in the use of electric power soon made it evident that an additional source of supply must be found. Investigation began in 1917, and after two years the city finally decided upon Lake Cushman on the Olympic Peninsula as being the best

ED. NOTE.—The editor welcomes articles on the practical activities of cities with respect to their public utilities, public works, police or other phases of administration. Whether the experience has been successful or not makes no difference. The story in any case will be interesting and valuable to other cities.

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available site. Its purchase was authorized by popular vote in that same year. This site in the Olympic Mountains is very different from the Nisqually site in the Cascades for its value depends upon water storage, a lake ten miles long being impounded by a dam 275 feet high.

The first unit of the plant costing $5,300,000 and producing 50,000 horse power was completed in the spring of 1926. The second unit will produce 90,000 horse power at an estimated cost of an additional $5,000,000. This will make the cost per horse power for the entire development about the same as the cost of the plant at La Grande.

RATES

The city has a monopoly of the electric lighting business in the city limits, and has practically eliminated the local gas company as a competitor for light business. There is competition, however, in the heating, cooking and power service. The privately owned electric company has a franchise which allows it to sell electric energy for heating and power to customers requiring more than 25 horse power. The gas company, also, is an active competitor for cooking and heating service.

The power rates of the municipal plant vary from 2.4 cents per kilowatt down to .45 cents per kilowatt, depending upon demand, or load factor. The city has recently announced that in June, 1926, there will be a further reduction in rates of about 10 per cent, favoring chiefly the larger users. The residence rate is 5 cents per kilowatt hour for a certain minimum demand and one cent per kilowatt for all additional current. For cooking the rate is 1 cent per kilowatt, and for heating ½ cent per kilowatt. For commercial lighting the rates are slightly lower than for residence lighting.

FINANCIAL CONDITION

The business of the city plant has increased threefold in the past ten years, amounting in 1925 to over $1,600,000. The annual net surplus has likewise increased until in 1925 it amounted to $844,000. The surplus has been used each year for the retirement of indebtedness and for the improvement of the plant. An auxiliary steam plant was constructed out of earnings and three quarters of a million dollars was contributed toward the construction of the new Cushman plant, reducing the amount of the necessary bond issue by that amount.

Excluding the new Cushman development, the light plant has an estimated value today of over $6,400,000. The final bond payment of $46,637.50 will be met June 1, 1926, and then the plant will be free of all indebtedness. There is an additional bond issue of $300,000, which cannot be paid until 1929, but funds have already been set aside sufficient, with accumulating interest, to meet it on the due date.

It is certainly something new in the realm of municipal ownership to find an electric light plant worth $6,400,000 entirely free from indebtedness. The loan for the new plant covers both new and old plants, but the retirement of the entire debt of the old plant is a notable achievement.

TAXES AND PAYMENTS FOR SERVICE

Questions regarding taxes and payments for service usually bring about disputes between advocates and enemies of municipal ownership, and this is true in the local situation. The municipal plant is exempt from the general property tax. In this state property is assessed for purposes of taxation at 50 per cent of its market value. When both units of the Cushman plant are finished, the plant will have a total book value of about

$17,000,000, and half of that sum, or $8,500,000, would be quite an addition to the tax roll. For 1925 the local tax rate for state, county and various municipal purposes totaled 72.16 mills on a 50 per cent valuation. This would represent about $220,000 on the valuation of the plant at that time, or about $580,000 if the entire plant were finished. In this connection, however, it should be pointed out that another local utility, which is privately owned, is valued for rate making purposes by a state commission at over $7,000,000, while for purposes of taxation it is valued by another commission at less than $1,500,000.

Although exempt from the general property tax, the electric plant does pay into the general fund a 5 per cent annual tax on its gross earnings.

The municipal electric plant receives services from other city departments which are supported by taxation. The city attorney, the city treasurer, the city clerk, the city comptroller and the civil service commission, all handle work for the municipally owned utilities. In fact, this work takes a large part of the time of some of these offices. The business of the light plant and of the water plant has grown to a point where it represents in volume fully half of the entire business handled by the city. To compensate the taxpayers for these services the electric plant for the past four years has paid 15 per cent of the operating cost of these offices. An additional 10 per cent is paid by the water plant.

On the other hand, the electric plant renders a service to the city for which its engineers assert that it does not receive adequate compensation from the taxpayers,—namely, street lighting. The city is exceptionally well lighted. A population of about 150,000 is provided with over 5,700 street lights, most of which are either 250 or 400 candle power, and some of which are of 1,000 candle power. For this service the department receives $65,000 from taxation, although its engineers contend that the service is worth nearly twice that amount.

As for the question of taxes, the attitude of the light department up to the present time appears to have been that the city benefits more from low light and power rates than it would benefit from an increase in the funds available for expenditure by the departments supported by taxation. There seems reason to believe, however, that the department is able to pay its full share of the general city expense, in addition to maintaining low rates.

RESULTS

There can be no question but what municipal ownership of our electric plant has proved a success in Tacoma. There is practically no opposition to municipal ownership and operation of this utility. Low power rates have attracted new factories. Low rates for cooking have resulted in the installation of over 3,800 electric stoves and ranges. Low heating rates have resulted in many houses and apartments being heated solely by electricity.

Not many cities can duplicate the results obtained here, for Tacoma is exceptionally fortunate in being in close proximity to mountain ranges containing several possible hydro-electric sites, which can be developed at low cost. This fortunate situation, however, is not the entire explanation, for we do not have to go far from Tacoma to find another community, almost equally well situated, which has expended very large sums of money for hydro-electric development with not very satisfactory results. Tacoma has been fortunate in securing the best available sites and in having the development and operation of its plant conducted with reasonable efficiency and entirely free from any form of graft.

PENNSYLVANIA'S PRIMARY

BY CLINTON ROGERS WOODRUFF

Not a clean-cut wet and dry campaign—Republican Party still without a state boss. :: :: :: :: :: :: ::

In analyzing a political situation, a single track mind greatly simplifies matters. There's but a single destination, and a single approach to it. So to the anti-prohibitionist, the results of Pennsylvania's primary are easily and quickly explained. Mr. Vare, the successful senatorial candidate, stood on a simple platform. In his own words, "The Volstead act has worked tremendous harm. It has broken down moral restraints, fostered disrespect for law, increased drunkenness and crime, and is a menace to our boys and girls through the medium of the 'hip pocket flask' habit. And it has not brought about prohibition which is the only excuse for its existence. I believe that its amendment, so as to permit the legal sale of beer and light wines, will restore respect for law and bring about true temperance. I am for that amendment. My two opponents are against any change in the present law which would mean a continuation of present conditions."

To this straightforward declaration he added: "If you vote for me, you vote for amendment. My nomination will be notice to the country and to congress that the great Republican state of Pennsylvania is for amendment and the result will be immediate."

He put the issue even more concretely and forcibly in his speeches: "Do you want a glass of beer? Then vote for me." There was no misunderstanding that direct question. And yet there were thousands who did not want a glass of beer, never had wanted a glass of beer, but who voted for him because he was the Organization candidate; others because they did not like Governor Pinchot or the supporters of Senator Pepper.

PEPPER HAD WET SUPPORT

On the other hand, the ardent Prohibitionist will tell you that Mr. Vare's nomination was not a public demonstration in favor of the modification of the Volstead act, because the combined vote for Messrs. Pepper and Pinchot both of whom declared in favor of the Volstead act, was greater than Mr. Vare's. How easy! Such a declaration, however, overlooks the fact that many of Senator Pepper's supporters were avowed wets, notably in Allegheny county, where lies Pittsburgh, one of the wettest cities in the state. There he had the support of the Republican organization, of which W. L. Mellon was the head, and that organization is notoriously and unblushingly wet. Likewise Berks county with its large German population, with an acknowledged fondness for beer, gave Senator Pepper a substantial plurality.

How many of Mr. Pepper's supporters were wet, how many moist, how many dry, no one will ever know until the day of judgment.

Governor Pinchot has deservedly earned the reputation of being the driest of the dry. I do not think there has been any dispute about that. At the same time he carried the four great mining counties of Lackawanna,

Luzerne, Carbon and Schuylkill, because of the help he had given the miners in the recent strike and that of two years ago. Miners, however, are wet, avowedly, notoriously wet, but their gratitude outweighed their thirst and they supported their benefactor.

Again your single track mind will tell you it was the victory of the city over the country, because Mr. Vare owes his nomination to the enormous majority rolled up for him in Philadelphia. He only carried two counties, Philadelphia and Dauphin. Pittsburgh is a pretty big city, but it did not register a majority or plurality in his favor. The same can be said of Scranton, Wilkes-Barre, Erie. These cities were for other candidates. The country was not united, Pinchot carrying 23 counties and Pepper 42.

THE POWER OF ORGANIZATION

If one were disposed to be single-tracked in his analysis he would come nearer the truth if he asserted that Governor Pinchot's candidacy made Mr. Vare's nomination not only possible but inevitable, for the Governor divided the normal Pepper vote and scarcely dented Vare's. Mr. Vare did not announce his candidacy until he knew that the Governor would run against Senator Pepper. He showed good political judgment. Indeed his political strategy was far superior to that of either of his opponents. He made few mistakes. He was temperate in his remarks. He used no vituperation in the face of great provocation. His opponents exhausted themselves in hurling charges, although the Governor addressed most of his to Senator Pepper, who was as much anti-Vare as he was.

This campaign, and its results illustrates again, if that were necessary, that it's poor politics to call names.

> Sticks and stones may break my bones,
> But names will never hurt me.

It also illustrates the power of political organization. Mr. Vare's was united, efficient, effective. There was a very great amount of Pepper sentiment in Philadelphia, but it did not crystallize into sufficient votes. His vote was just about the same vote that the Independents have been polling since the days of the old Municipal League.

To hear Mr. Pepper's campaign manager talk or to read his pronouncements, one would think it was impossible for a decent man or woman to vote for Mr. Vare, but many thousands of them did. Some for one reason, some for another. Some because they wished to voice their objections to the Volstead act; some because they resented the action of a great Protestant body which has been conspicuous in its advocacy of Volsteadism; some because Vare represented the common people, while his opponents were identified with the plutocrats of the land; some, perhaps a majority, because *The Organization* was for him.

When the first returns came in it looked as if Mr. Vare had won an overwhelming political as well as a personal victory, for they indicated that his gubernatorial candidate had won as well; but later returns showed Fisher to be the successful candidate. Had Beidelman been chosen it would have made Vare boss of the state as well as of Philadelphia. He is a potential factor by reason of his success and of his smoothly running political machine, but not supreme boss, as were Penrose, Quay and the Camerons in their day.

For a man who two years ago was to be relegated to the ranks of a ward leader, however, Vare has done remarkably well.

John S. Fisher, who has won the Republican nomination for governor,

is a singularly well-fitted man for the place. He has been a school teacher, corporation official, lawyer, financier. He was eight years a state senator and as such conducted the successful investigation of the State Capitol scandals. He was also for four years an efficient banking examiner.

He is admirably fitted to give the State Code, inaugurated by Governor Pinchot, with the hearty support of the Republican organization, a fair tryout.

SKETCHES OF AMERICAN MAYORS

IV. WILLIAM E. DEVER OF CHICAGO

BY VICTOR S. YARROS

Mayor Dever was elected on his record as alderman and judge by the vote of members of all parties as a protest against eight years of Thompsonism. How has the early promise of his administration been fulfilled? :: :: :: :: :: :: :: :: :: ::

In April, 1923, the voters of Chicago elected Judge William E. Dever to the office of mayor by a very handsome majority. His opponent, Arthur Lueder, Republican postmaster of Chicago before and since the election, was a very respectable candidate. The latter was not defeated because of his republicanism in national politics—Chicago had often elected Republican mayors—but because thousands of independents and semi-independent Republicans had reached the conclusion that Dever was the fitter of two fit candidates and the more likely to promote the welfare and progress of a community faced by many difficult and vital problems.

Judge Dever was not the choice of any machine or party boss. It was generally believed at the time that the Democratic machine of Chicago had another candidate for mayor and did not favor Dever. Groups of forward-looking and disinterested citizens, after a survey of the field and the available timber, had decided to urge Dever upon the organization and its boss, and Judge Dever himself had to be prevailed upon to give up a comfortable, politically safe, fairly profitable place on the appellate bench in order to reenter the uncertain, storm-swept, not too clean arena of partisan politics.

HIS EXCELLENT RECORD

Judge Dever, with considerable reluctance, had yielded to the arguments and pleas of the friends of good government and had become a candidate for the office of mayor. The Democratic machine and its head, also not without misgivings and inward struggles, had accepted Dever's candidacy. Judge Dever was elected on his record in politics, in civic affairs and on the bench. He had served as alderman in the city council for many years from a cosmopolitan West Side ward, was well known to the religious and other leaders of his district, had taken part in social-settlement activities, and had an excellent reputation. His probity and sincerity had never been questioned. As alderman, his vote had never been given for a dishonest ordinance or

dubious, tricky resolution. He had been repeatedly praised and indorsed by the famous Municipal Voters' League in its frank and unsparing annual reports on aldermanic candidates and their records. In fact, his service in the city council and his acquired knowledge of municipal and civic affairs commended him to intelligent voters and good-government organizations even more than did his personal and political honesty.

It should be remembered that the spring of 1923 in Chicago witnessed the closing of a shameful régime of graft, spoils, waste, grab and revolting humbug in the City Hall. For eight long years the city had groaned under a succession of scandals in the municipal government. It had twice elected a mayor who was intellectually unfit for the office, who was indolent and ignorant, and whose advisers and henchmen had utter contempt for economy, honesty, efficiency or decency. Paralysis and stagnation, with mounting costs of government, higher taxes, sloth and parasitism in all the departments, bribery and blackmail in the police department and riotous extravagance everywhere—those were the beauties of the infamous régime that was passing into history at that time. The majority of the people were sick and weary of misrule, of monumental incapacity, of rant and cant, and of cynical corruption.

Dever was elected because the people longed and prayed for simple honesty, for intelligence and for constructive municipal and civic policies. Judge Dever made no sweeping promises during the campaign; he painted no utopias; he indulged in no glittering generalities. But the voters knew that he was a progressive and at the same time a practical and sane student of municipal problems.

A QUIET WORKER

How did Mayor Dever go to work after his election and installation? He eschewed pomp and circumstance; he selected capable, fit and trustworthy subordinates; he assured the city council of hearty co-operation and non-partisan treatment of all matters within his and its purview, and he openly appealed to the decent elements for support.

Mayor Dever is no crusader, no militant reformer, no orator, no spellbinder. He is quiet, modest, patient, fair-minded, simple in speech, responsive to new ideas. He accepts few invitations from organizers of banquets and conferences, but when he speaks, he has something definite to say. He inspires confidence, and the business and civic organizations of Chicago have in fact evinced trust and confidence in him in very palpable ways. They have lately made concessions and gifts to the city which they would never have made to a spoilsman, partisan or demagogue. For example, a group of railroad executives has offered to defray the cost of an important improvement, the straightening of the Chicago River in the heart of the city—thus facilitating the opening of several needed streets now blocked by yards and tracks. The expected increase in the value of the land owned by the railroads may or may not eventually offset the immediate sacrifice, but the point is that a very desirable improvement, strenuously opposed by the railroads for two decades, was made possible by the tact, conciliation and good faith of the mayor. To take another example: the Commercial Club, a body of leading men of affairs, has offered the city a survey of and report upon its requirements and potentialities as a lake and river port. The city is too poor, owing to an anti-

quated and impossible revenue system, to finance the survey, and the offer of the Commercial Club was praised and welcomed by the mayor and his cabinet. (The council voted to accept it, though not without some foolish grumbling.)

TRACTION AND PROHIBITION

Mayor Dever has had to deal with two very intricate and difficult questions—one of them foreseen, the other unforeseen and rather embarrassing. The first was traction, the second prohibition.

The local traction question seems eternal. It was "settled" in 1907 by what was then rightly considered to be a model ordinance. But the franchises of the street car companies then granted expire next spring, and a new settlement is necessary. There is much sentiment for municipal acquisition, ownership and operation of those lines, and Mayor Dever is, in fact, pledged to this solution of the problem. But Chicago has exhausted its constitutional bonding and borrowing power, has no cash sufficient for the purpose, and no prospects of easier financial circumstances in the near future. It cannot order the companies to take their tracks and equipment off the streets and suspend service. It cannot confiscate the property. It cannot impose arbitrary terms. It is forced to bargain with the companies and the bankers who represent the security holders. It must, in short, compromise and accept, for the present, something short of municipal ownership.

Last April Mayor Dever and his supporters in the council offered a traction plan to the electorate. The plan was honest and well-considered, but it was not "straight" municipal ownership. It was emphatically rejected by the voters. Moreover, reformers and progressives friendly to the Mayor publicly or privately condemned "the Dever plan" and made common cause with reactionaries, humbugs and spoilsmen in the effort to kill it beyond resurrection. The mayor was charged with vacillation, weakness, betrayal of the cause of public ownership, lack of business sagacity, acquiescence in a corporation grab of a most audacious sort, and what not. In these charges there was much violent exaggeration, but there was also some truth. Mayor Dever's handling of the traction question was far from masterly and his leadership far from inspiring or vigorous. He has not cared or ventured to resubmit his plan, though no better one, or one satisfactory to him and his advisers, has been proposed during the period that has elapsed since the adverse plebiscite. Mayor Dever has, for the present, washed his hands of the traction problem. The aldermen are negotiating with the companies, offering them an *indeterminate* franchise, suggesting other new features, and hoping to offer a definite settlement to the voters in the fall. The mayor is not co-operating with them, and has hinted at dislike of and opposition to so-called terminable franchises. He is just now under press and citizen criticism for this passive and negative attitude; but he takes the ground that it is the business of the aldermen to work out a solution of the traction problem, and that his views will be given at the right and ripe moment. This may be technically correct, but the city needs direction and leadership and looks for these qualities to the mayor.

POLICY ON PROHIBITION HAS COST FRIENDS

In dealing with prohibition Mayor Dever has displayed courage, consistency and independence. He is a

"wet" in theory, and most of the Democrats who voted for him undoubtedly expected him to give the wets the benefit of a policy of benevolent neutrality. That is, they expected him to wink at widespread liquor smuggling, beer running and bootlegging. They expected him to issue orders to the police against undue zeal and vigorous pro-prohibition activity, though they had no objection to an occasional Pickwickian declaration in favor of law enforcement or of the moral duty of obeying all statutes regardless of their reasonableness or necessity.

Perhaps Mayor Dever would have pursued this policy, but soon after his installation he found it utterly impossible. Beer manufacture and beer running and bootlegging might be tolerated—these things *have* been and *are* tolerated by church-going and reputable mayors and governors—but murder, inter-gang feuds accompanied by robbery, burglary, assassination, wholesale corruption of police officers, secret alliances between powerful bootleggers and high officials—these things Mayor Dever could not overlook or suffer.

He issued orders to police to close the breweries, stop inter-gang murders, and arrest or scatter instead of protecting the lords of the illicit liquor trade. He has not dried up Chicago, to be sure, but he reduced the murder rate and cleaned up a good many police stations. He has lost hosts of friends and supporters, who persist in misinterpreting his position. If he is renominated by his party, he may lose the election. Thousands of low-lived and unprincipled ward heelers and "workers" will knife him, out of spite and malice, if not in the hope of securing a wet administration. But it is a fact that many anti-prohibition liberals and progressives admit that Dever had *no choice* in respect of the wet-and-dry issue and was bound to act as he did.

A BETTER ADMINISTRATION

Aside from these major questions, Mayor Dever has justified all expectations of the true friends of good government and forward-looking administration. There have been no spoils or contract scandals under him. He believes in the merit system and applies it. His civil service commission is not "a wrecking crew"—a phrase used by a civic body to characterize the so-called merit commission of his predecessor. There are no fake sixty-day appointees in the offices. Examinations are held as and when the law requires, and the grading is honest. Applicants know that they will get a square deal.

Mayor Dever is interested in intelligent and worthy employment of leisure time. He has discussed recreation and amusement projects with civic clubs, has encouraged good music *al fresco*, and has ordered a survey of the summer amusements of other cosmopolitan and big cities. He has appointed a commission to study the whole problem of recreation.

He would have done more in these and other constructive directions had he not been handicapped by lack of revenue—a lack due, in the first place, to an obsolete and unenforceable "general property tax" which the generality of taxpayers successfully dodge, and, in the second place, to favoritism, politics, discrimination and caprice in the assessing of real estate, improvements and tangible, visible personal property. The state legislature, not the city governments, can revise and modernize revenue and assessment laws, and Mayor Dever's persistent advocacy of tax reform has possibly helped to dramatize that issue.

SOME CRITICISM

It should not be inferred from the foregoing that Dever has no foes and no critics among enlightened and independent citizens. Some of these think that he has not been sufficiently stern or aggressive; that he has delegated too much power to George Brennan, the Democratic leader, or boss, of Chicago and the rest of the state; that he has not saved as much money for the taxpayers as he might have saved by more rigorous retrenchment, economy and reorganization; that there are still not a few sinecures and parasitic hangers-on in the City Hall, and that Dever ought to have done what Mayor Jackson of Baltimore did—invoke the aid of business men and civic organizations and authorize them to employ efficiency experts, overhaul the pay-rolls, and make a clean sweep in all the departments.

However, even these critics heartily commend the mayor's integrity and complete freedom from selfish ambition or partisan prejudice and bigotry. The sins they charge him with are sins of omission, not of commission. They complain of his temperament, not of his character or his ideas.

Chicago is said to be one of the most lawless cities in the country, but in combating crime and criminal vice team work is necessary—the earnest and effective co-operation of city, county, state and federal authorities. Chicago has not been fortunate in its state's attorneys, its sheriffs, its jailers and its inferior judges. A mayor cannot do the work of grand juries, prosecutors, courts and trial juries in addition to his own. The fair-minded give Dever credit for what he has done, for what he has endeavored to do, and for the standards he has tried to live up to despite pressure, antagonism and temptation. His reputation in the country is deserved, and his record, if far from perfect, is quite exceptional in some respects.

CONGESTION DE LUXE—DO WE WANT IT?

BY C. A. DYKSTRA

Efficiency Director, Department of Water and Power, Los Angeles

Last month Daniel Turner wrote on the vicious circle of rapid transit and congestion with special reference to New York City. This month Mr. Dykstra discusses the same problem from the standpoint of Los Angeles' experience. And the east and the west have met, for without any collusion or conspiracy the two authors have arrived at virtually the same conclusions. :: :: :: :: :: ::

Confronting city fathers in all of our rapidly growing cities is a problem that is insistent and yet, under our prevailing philosophy of city planning, seemingly impossible of solution. It is the fact of increasing and ever increasing congestion, congestion de luxe. The physical result of this congestion is the slowing up of all transportation facilities and the consequent tying up of traffic. Any trucking concern will furnish astounding figures as to the time it takes for the delivery of materials in the built-up sections of our large cities. The human and social problems raised by this fact of conges-

tion are no doubt even more important than the merely physical difficulties involved, but they are not so obvious and tangible. They impinge upon the congestion problem, however, and find some expression in the popular demand for more rapid transit.

The modern city is a result, in part, of certain well recognized economic, commercial and industrial causes. These have been discussed sufficiently in many places, but its physical difficulties and many of its congestion problems have not had so much attention. They are due, in some varying degree, to that business psychology and city planning attitude which believes in the so-called stabilization of the "business district." This attitude is the result of a centralization complex which thinks in terms of higher and higher land values, heavier sales volumes, pedestrian counts, bigger rentals and finally, in order to carry such values, bigger and better skyscrapers. "Buy business frontage and insure your old age" is the slogan of an increasing number of investors. An amazing number of middlemen are busy tickling the speculative instinct of land buyers. The recent Florida exuberance is but an aggravated instance of what is going on in some proportion in our larger population centers all the time.

BUSINESS INTERESTS WHICH FAVOR CONGESTION

In order to maintain values in land, people in increasing numbers are essential. Therefore, the drawing power of the central district in great cities is tremendously important. It needs stimulating constantly. But the natural reaction of a population anywhere is to spread out in sub-centers, to build up small communities and business districts, to get the advantages of the city without its very apparent disadvantages. The centralizationist has to combat this tendency, make the business section more and more attractive and easier to get to, appeal to popular and local pride, advertise the advantages of trading downtown and, in a general way, arouse the interest and curiosity of the up-towner. A glance at the advertising of the great stores in any metropolitan daily and a peek into the show windows will furnish evidence on this point.

The pioneer of the old days has been transformed into the promoter of the new age. The city is his oyster. The instinct for land—which once was a longing for acreage—is now a desire for close-in property. Income from land is the appeal. We all have it in a greater or lesser degree. Up to a certain point, this desire is no doubt wholesome, but there is a law of diminishing returns. The result after that point has been reached, is tremendously costly, both in money, and in social advantages. Mr. Mumford, in a recent article in *Harper's Magazine*, discussed this phase of the subject most admirably. Perhaps unconsciously we have been led into certain habits of thinking which may end disastrously unless we can desist from artificial stimulation and lead city planning into a more logical, orderly and natural course once more.

At the present moment our cities are faced with a double barreled problem—mass transportation and the ever increasing individual transportation units which clog our streets and make our traffic congestion worse. The automobile now contests the surface of the street with the street car, and popular sentiment in many places demands that the street car give way and go underground or overhead. Automobile owners and drivers suggest that it would be a fine thing to take the street car off the streets and the

street car rider is easily convinced that such a solution will shorten the time between the city and his home. Business interests who want bigger and bigger crowds downtown—who see in congestion not an evil but a great good—become the natural leadership in this seemingly natural and normal solution, the building of rapid transit facilities in subways.

Thus our congestion problem becomes at one stage the rapid transit problem and our engineers in many cities are submitting comprehensive subway and elevated plans to city councils and traffic commissions. Los Angeles, at the present moment, is a case in point and illustrates rather completely the psychology above referred to.

THE SITUATION IN LOS ANGELES

Los Angeles has an incorporated area of more than four hundred square miles. Within a radius of six or seven miles its population density is still considerably less than that of the entire Chicago or Philadelphia district. It is basically a "single-family dwelling" city although apartment houses and flats are being built rapidly—too rapidly according to local occupation studies. The population is probably well over a million. The downtown streets are comparatively narrow and in one area badly handicapped by "Bunker Hill." It has a rapid transit system to the suburban cities, the Pacific Electric, which uses the streets to reach its terminals. Moreover it has the greatest density of automobile use of any population in America. The in-and-out count of motor vehicles, according to a recent survey, is very substantially heavier than in Chicago. Transcontinental trains enter the city at grade, and one street is used longitudinally by the Southern Pacific. The city lies between such areas as Pasadena, for instance, and the beach towns. During the rush hours street car transportation is slow, cars are crowded and sidewalks are choked.

To meet the situation thus roughly described, Kelker, DeLeuw and Company of Chicago have proposed a comprehensive plan of rapid transit and street car operation. This plan contemplates unified operation of all lines within the city, certain subways and elevateds and their financing by the city at large, the property benefited, and the car riders in a proportion to be agreed upon.

The argument for this or some other comprehensive plan is conclusive to many minds. It runs as follows: we stand in street cars miserably crowded; streets are so choked that we could not use more cars if we had them; our streets are narrow and since it is too costly to widen them, let us create new streets under or over; we need comfort, speed and economy in transportation and we can get it by "mass transportation." From this point the argument becomes prophetic. The orderly development of the city requires the extension and expansion of present transportation facilities and the construction of rapid transit; the population needs spreading out, and rapid transit will turn the trick; since the rider cannot pay what the service will cost, the public must help finance the program in the interest of a great public benefit; high-speed operation is concurrent with the growth of great cities and is a sign of progress; we must begin soon or we never can catch up with the demand; the putting off of rapid transit construction will make this an intolerable city to live in.

BASIC ASSUMPTION QUESTIONED

A careful study of this whole argument will show that it proceeds upon assumptions which many will question.

Is it inevitable or basically sound or desirable that larger and larger crowds be brought into the city's center; do we want to stimulate housing congestion along subway lines and develop an intensive rather than an extensive city; will rapid transit spread the population anywhere except along the new right of way; is it ultimately desirable to have an area of abnormally high land values with its consequent demand for the removal of building height restrictions; must all large business, professional and financial operations be conducted in a restricted area; must the worker be transported through the heart of the city to get to his work; as a matter of fact are not all of these assumptions, which were controlling in the past generation, being severely arraigned by thoughtful students?

A glance at the trend of the times reveals other tendencies. In an era of centralization business itself is seeking outlets away from the central areas. Decentralization is not the word to use for this tendency, but for the purposes of this argument it will answer in so far as location is concerned. Branch banks are going out to the people, factories are seeking outside locations, neighborhood theaters are springing up all over the city and retail merchants are building, or have established or are contemplating, branch stores in outlying locations. Chain provision and drug stores are giving outside residents the advantage which traditionally is possible only in the department store.

The Kelker-DeLeuw report for Los Angeles was carefully studied by a committee of the Los Angeles City Club. This committee came to certain conclusions as to the fundamentals involved in our rapid transit and traffic problems. It found that American experience shows that rapid transit increases rather than relieves congestion. Moreover such transit where subways are involved has not been a self-supporting venture. Thus the public pays for increasing its own congestion and multiplying its own problems. It involves a vicious circle of pedestrian counts to increase rental values, to raise building heights, to make room for more people to raise land values *ad infinitum*. The committee pointed out that cheap power, the universal use of the telephone, and the automobile are all subsequent to the development of American rapid transit systems and each has affected communication fundamentally. Traditional solutions must therefore be examined with great care. It suggested further that the city of the future ought to be an harmoniously developed community of local centers and garden cities in which the need for rapid transportation over long distances will be reduced to a minimum.

It found that only six per cent of the vehicles on the Los Angeles streets are street cars and that vehicular traffic is increasing. It ventured the assertion, therefore, that, in spite of any subway development, our vehicular congestion can only be solved by traffic regulation. Downtown streets no matter what their width probably will always be used to their capacity, for traffic will increase to the saturation point no matter what facilities are provided.

The committee took its stand for the elimination of all grade crossings and the taking of the interurban cars from the streets by the building of adequate elongated interurban terminals. It asked for a rerouting of the local street cars so that certain streets might be relieved of unnecessary traffic burdens. It insisted on more stringent parking regulations and recommended a serious study of the bus as a public transporta-

tion unit. As a general conclusion the committee declared that Los Angeles should not—and certainly not at the present time—undertake any subway construction or rapid transit facility within the six- or seven-mile circle. It should perfect its interurban facilities, however, and work out its street and viaduct plans with all possible speed. It took its stand for a natural, normal and healthful expansion of the business district without the artificial stimulation which comes with the subway. Put in terms of conflicting interests the committee defended the outside business center idea as against the downtown theory. And it emphatically pointed out that there is no solution or cure for the rapid transit difficulty. Every attempt to cure brings on an aggravated case of the disease to be cured. One rapid transit line calls for a mate to help it out almost as soon as it begins to operate. It is inevitably thus; therefore why begin, particularly if there is adequate territory to care for a constantly growing population.

RAPID TRANSIT AND CONGESTION RELIEF

With this committee report the writer heartily agrees. The history of rapid transit development in American cities carries with it its warning to Los Angeles. The chief argument for rapid transit—congestion relief—is a delusion and a snare as far as sound city planning is concerned. A population can be spread out without rapid transit or street car facilities. The private automobile and the bus have turned the trick so far as transportation is concerned. The development of the motor truck and the availability of electric power for manufacturing will continue to decentralize the industrial district. There can be developed in the Los Angeles area a great city population which for the most part lives near its work, has its individual lawns and gardens, finds its market and commercialized recreational facilities right around the corner and which because of these things can develop a neighborhood with all that it means.

Under such conditions city life will not only be tolerable but delightful—infinitely more desirable and wholesome than the sort induced and superinduced by the artificially stimulated population center which constantly must reach higher and higher into the air for light, air and a chance to see the sun. It will be a city in which children will not be discriminated against.

The problem here under discussion has had some attention from the White House. In a recent address in which he discussed congestion, high buildings, transit and traffic, President Coolidge said:

> It must be said that thus far the victories have all been on the side of the skyscrapers, the elevators and the ever-increasing congestion of population. Many difficult and costly readjustments must be made. There is need for concentrated, fundamental and courageous consideration of all the questions involved. They reach a hundred times deeper than the more superficial problem of getting streams of motor cars through city streets. They have to do with the elements of social organization. They concern vital phases of community welfare and progress.

NEW YORK COUNTY GOVERNMENT ARCHAIC

BY ALFRED E. SMITH[1]
Governor of New York

Governor Smith tells why and where county government breaks down; suggests a county manager. Practically no change in New York since the English took control from the Dutch! :: :: ::

New York has made an excellent start toward the establishment of state government on a sound basis. We ought now to give our attention to the problems of county, town and local government, and to see that we rebuild and modernize a machine which is over two hundred years old.

There is nothing new in this subject. A special committee of the constitutional convention of 1915 devoted considerable time to this problem. It concluded that the single, rigid type of county government existing in this state without change for over two centuries and frozen into the state constitution was entirely obsolete. The constitutional convention said that the conditions were worst in the more populous counties, where modern conditions of housing, transportation, welfare, justice and public improvements had put an intolerable strain upon a framework of government based on county, town and village conditions of two hundred years ago. The constitutional convention concluded that an amendment to the constitution was necessary to bring about any improvement and the amendment which was incorporated in the proposed new constitution provided that the legislature might classify counties and set up different types of government for different classes of counties, but that no new form of government should be imposed upon a county without its approval. The convention also favored county home rule by providing that no local laws affecting a county should be adopted excepting upon the request of the county authorities. After the failure of the constitution of 1915 the counties of Nassau and Westchester made active efforts to bring about amendments to the constitution which would enable them to modernize their forms of government. Both of these counties appointed charter commissions and after many years of agitation a special amendment affecting these two counties only was adopted by the people in 1921. Since then charters have been submitted to the voters of both of these counties and disapproved, and new charters are about to be submitted again with amendments calculated to make them more acceptable to the electorate. It should be noted that in both of these counties, especially in Westchester, although there have been differences of opinion as to the new forms of government, intelligent people generally agree that the existing forms cannot stand up much longer under the pressure of present-day conditions.

[1] Excerpts from the governor's special message to the legislature urging that the Hughes' Commission be authorized to study county government.

LOCAL GOVERNMENT THE SAME SINCE 1676

From 1921 to 1923 a special joint committee on taxation and retrenchment of the legislature made a study of the tax and government problems of this state. This committee, under the chairmanship of Senator Davenport, made a very thorough study of county, town and village government, and submitted to the legislature of 1923 a report which concluded that they were costly, wasteful and obsolete and that they needed complete reorganization. It pointed out that most of the aspects of these local governments had not been altered since the provincial government of New York was established after the Dutch were driven out in 1664. In other words, we are living today as far as county and town government are concerned under the laws promulgated by the Duke of York in 1676. Town officers elected today are almost without exception the same town officers who were elected before 1700. The only change made since then in town government has been the authorization to create special districts for special purposes, such as sewers, fires, sidewalks, etc., and even these districts were created without any understanding of the results which would follow because they overlap one on the other and set up within one township all sorts of overlapping special governments and special tax districts. It was not until 1925 that the old bridges maintained by the towns on state highways were taken over by the state.

The special joint committee also referred to the fact that many town functions should be transferred to the county. It called attention to the inadequate highways and roads which are being built by the towns, the fact that numerous justices of the peace without legal training are attempting to administer justice in large communities without any training or qualification for this work and at the same time sitting as members of the town board in an administrative capacity. The committee showed how hopelessly out of date are the elected town constables and coroners. The ineffectiveness of small, scattered and overlapping health districts was referred to and the impossibility of securing competent health officials for such small districts on part time and for inadequate compensation. It was shown that the charity and poor law system had broken down in the larger counties. Particular attention was drawn to the great difference in the conditions of life and government in the various counties of the state, some being primarily urban and suburban or built around one large city, and others being rural and having only a few small cities or large villages, still others being entirely rural or forest counties of scattered population in which conditions today are not unlike those in the time when county and town government was first established.

COUNTIES WITHIN NEW YORK CITY USELESS

The committee on taxation and retrenchment did not include the counties within New York City in its study but every agency, official and unofficial, which has studied these counties agrees that there is no need of the elaborate, independent governments within the city of New York which have been set up by the five counties. As a matter of fact, the city government should have complete control over these counties and this should have been provided in the home rule amendment.

It is interesting to note in connection with the general agreement as to what is wrong with our county government that these conclusions have been reached irrespective of politics. Re-

publicans and Democrats in the constitutional convention of 1915 agreed on it. The Republicans and the Democrats on the special committee on taxation and retrenchment agreed on the subject. Governor Miller in his message to the legislature of 1922 said that the county government amendment applying to Westchester and Nassau was needed in every county of the state.

STATE HEADS COMPLAIN

There are further evidences on this subject. Heads of departments in the state government have repeatedly called my attention to all sorts of defects in county, town and village government and have stated that it is the weakest, most ineffective and most wasteful part of the whole government machinery. The health commissioner has frequently complained about the inadequate small health districts of the villages and towns and has stated that there should be a county health unit. Practically all of the health experts and organizations agree with him. The charity and welfare authorities make similar complaints. The public works and highway authorities tell me that the town roads are a disgrace, that they cannot possibly stand up under the pounding of present-day traffic and that a good part of the state aid given to the towns is thrown away. They point to the town bridges on state highways recently taken over by the state as an illustration of what happens when a matter which has become regional or state-wide is left to local people with inadequate funds and local ideas of economy to take care of. Members of the bar, especially in the larger and more populous counties, have repeatedly stated that the present justice of the peace system under which a county like Westchester has 76 lay justices is a farce in these days. It was all right and may to-day still be useful in very thinly settled counties where there are few cases and few lawyers, and where a local man of standing, even if he has no legal training, can well take care of the small matters that come up from day to day. In the larger counties, with complicated problems and plenty of people trained in the law and with the factor of distance completely minimized by modern conditions of travel, a small, full-time circuit court of real judges is the obvious remedy.

LOCAL TAX SYSTEM A JOKE

The members of the tax commission and tax experts unanimously agree that our local tax system in the towns, counties and villages is a good deal of a joke. The county and town tax system, which also provides for the state and school tax and the tax for special districts is unscientific, inequitable and wasteful, where it is not worse. Numerous part-time, unqualified tax collectors with all kinds of views as to assessment are attempting to assess property of tremendous value without any proper central county control. The village tax system, which is entirely independent of the county and town system, is often based on totally different theories of assessment and the actual assessments for a single piece of property by a village and by the town in which it is located often vary greatly. Similarly tax authorities point out that local tax collections should be consolidated and proper records maintained. It is certainly a ridiculous thing that in order to change the present system under which there are three elected town assessors and to substitute a single paid town assessor, or a county board of assessors, it is necessary to amend the state constitution. One of the most ridiculous things in government is to read the reports of the state tax commission and find that local tax assessors, who are

required by law to assess for full value and to take an oath that they have done so, actually assess in many cases for 20 and 30 per cent of the value, with the result that in the more obvious cases which can be discovered, the state tax commission has to attempt to make the necessary readjustments. It appears that the manual of instructions for assessors issued by the state tax department is a good deal of a joke to the local town and village assessors. The joint committee on taxation and retrenchment in 1923 pointed out one interesting case of a village which had grown little in population or improvement and in two years increased its assessments from less than $100,000 to over $1,700,000. The reasons for the increase are not known. The interesting fact is that in the same two years the town assessments for an area vastly greater and including the village, remained stationary at about $1,000,000. It is also an interesting fact that practically all tax authorities agree that city assessments are fairly scientifically and accurately made and are based on a substantial percentage of true value.

NO PROPER COUNTY EXECUTIVE

Every student who has ever given this problem any consideration at all agrees that there must be some kind of a proper county executive, whether it be an elected county president, or a county manager serving under a small county board. The county boards of supervisors in this state in most cases have entirely too many members. Some of them have over fifty. How can a board of supervisors of sixty, or fifty, or even thirty members carry on the executive work of a county? The county supervisors are elected from towns and wards and none of them represent the county as a whole. This mixing up of legislative and executive functions has never been successful anywhere. It is agreed that many town functions must be transferred to the county and that a reasonably long term for the executive should be established. It is also agreed that the same changes which are now being made in the state government looking to the consolidation of departments, appointment of department heads by the county executive, reduction in the number of elective offices and a real county budget system are essential in all of the large and growing counties of the state.

IMMEDIATE ECONOMY NOT THE GREATEST GAIN

There is a growing conviction that there are too many counties and that there are certain counties which should be consolidated. It has also been repeatedly recommended that counties should co-operate in the administration of certain joint enterprises, such as tuberculosis hospitals, county jails or farms, etc. Most of the recommendations previously made for the improvement of county government have laid emphasis on immediate economy, that is, savings through internal reorganization or consolidation. I think this is unfortunate. The economies to be obtained in this way are the great ultimate economies, not to be measured in immediate cuts in the budget. They are the economies which result from making plans in advance and from having the right kind of organization to carry them out. They are the savings which result from preventing ultimate waste. I am much more interested in seeing the local government of this state organized to meet the problems of the future than I am to show that through some recommendation of mine there may be a saving of a few hundred dollars in jobs or in purchasing supplies, desirable as these economies may be.

AERIAL PHOTOGRAPHS AID TAX ASSESSORS

BY SHERMAN M. FAIRCHILD

How a new art can facilitate the making of tax maps which are indispensable to fair assessments. :: :: :: :: :: ::

It is an old and universally accepted statement that in this world but two things are certain; these are death and taxes. They both affect the Average Citizen; and toward both, in one way, his attitude is the same: he pays the least possible tribute to both. While the accomplishments of medical and sanitary science of the past fifty years have enabled our Average Citizen to increase his span of years, yet often is this increase only a longer continued period of worry and fret due to the close margin between what money he earns and what he pays out. Of the money he spends, a not inconsiderable amount goes toward the guaranteeing of his life, liberty and the right to pursue happiness—in other words, for taxation. Even the transient laborer pays his share of taxes; everything he purchases has a tax burden included within its price. But the science of an equable distribution of the tax burden has not kept pace with the advance of other sciences; and it is the purpose of this article to show how certain communities have increased their ability to furnish the Average Citizen with the things that make for his safety and comfort and still demand of him a smaller portion of his earnings.

For more than three years the increase in value of Florida real estate, and the consequent increase in the number of owners of such real estate, has held the attention of the whole United States. As was the case when similar conditions prevailed in California, this phenomenal growth in values has tended to obscure the fact that practically all properties in the United States are increasing in value. Individual ownerships are becoming smaller and consequently the number of holdings is becoming larger. These features are most noted in the metropolitan areas of the larger cities of the United States. One of the most prominent real estate operators of New Jersey recently offered to wager $1,000 that he could show statistics which would duplicate, in his own county, those of the Florida boom.

With this increase in value of property has come an increase in the standard of living in this country. The standard of living does not necessarily refer only to those things which make for greater creature comfort, but also to those things which make for better transportation facilities in the shape of better highways, for better sanitary conditions, and for more beautiful surroundings. The result of this has been that municipalities particularly have been called upon to expend more and more money on improvements. In order to spend more money the municipality must collect more from its citizens or borrow money from them or others. Unfortunately the latter course has too frequently been followed. Under the system of property assessment generally in vogue at present, increase in revenues from taxes has

generally resulted in an increase in the tax rate; and superficially it would appear that this statement comprehends all that can be said about the situation. However, if we cannot pass over or through this obstacle we may go around it. We may make certain that all citizens are paying their fair share of the tax burden.

ASSESSMENT LISTS MUST BE COMPLETE

In order that taxes may be assessed against every property holder we must know that our lists of property holders are complete. With the rapidly changing ownerships, and the subdivision of large parcels into small ones, at present the rule in the United States, the tax authorities are facing the difficult and rather expensive problem of keeping their information up to date by means of perpetual observations and search of records and by direct inspection of properties where they are located. While it is obvious that only a direct inspection by a person trained in the science can determine the value of taxable property, it is also obvious that the first requisite in the determination of the value of the property holdings is a good map. Given two pieces of property indentical in size, and bearing thereon identical buildings, used for identical purposes and having equal frontages upon streets that are similar in every physical respect, that is, width and quality of pavement, etc., yet one of these properties may exceed the other in value by many times because the surroundings for a radius of many miles may be so different in the case of the one property with respect to those of the other.

With a sufficient expenditure of money and given sufficient time, the most perfect possible map can be produced by tax authorities for their use in equalizing the tax burden. But here there is a vicious circle; the tax authorities have not the money available because the revenue at present yielded is not sufficient to cover the cost of such an investigation, and if the money were available to cover this cost it would probably be the case that such an investigation would not be imperative. In the thickly settled portions of Europe, the land has been held in ownership for so many hundreds of years that all lines are fairly well defined and all the ground has been repeatedly and well mapped; but in the United States it is probably safe to say that most of the land whose density of population even remotely compares with that of Europe has been held in ownership on an average of probably less than fifty years. The growth of population, commerce and industry has far outstripped the production of accurate, detailed maps. Engineering science has, however, within the last five years provided us with a practical and cheap instrument for the accurate recordation in the form of easily read maps of details of the ground and all things thereon of size enough to be of importance.

AERIAL PHOTOGRAPHS AS MAPS

Aerial photographs are now so common as to excite no more than passing interest, but it is only within the last few years that a practical technique for correlating the disclosure of aerial photographs to human needs has been developed. One of the most striking and most effective uses of the aerial photograph has been developed only within the past two years and it may be safely said that only within the past year has this development reached the stage where the applicability of its technique may be considered universal. This is the use of aerial photographs in tax assessment work.

So much has been said regarding vertical aerial photographs, what they

can do and what they cannot do, what they are and what they are not, that more space need not be devoted here to a description of them. With very few exceptions it is recognized by all persons at all familiar with them that they form the basis for the most perfect sort of a scale map, in that they record distances between, and characteristics of, all objects exposed to the light at the time they are made.

It is, however, important to bear in mind certain things necessary in the securing of the original exposures for this work. These original exposures should be made as large as possible in order to record as much detail as possible. Standard aerial photographic film is about $9\frac{1}{2}''$ wide and $75'$ long yielding single pictures $7''$ x $9''$. The original exposures should be made with the flexible film pressed perfectly flat and should have recorded in the center thereof the image of a small cross, so that at all times where the country is a little rough reference may be had to this cross for purposes of any slight correction of displacement due to relief of the ground. These exposures when taken cannot be thrown away. They must be saved for further use; and it is advisable that they be made on film in order that there be no breakage and thus destruction of them.

ADVANTAGES OVER OLD METHOD

Aerial photography as applied to mapping has three advantages over old instruments and methods. First, a given area can be covered in a very small fraction of the time; second, a given area can be covered at a small fraction of the expense formerly required; and third, what it portrays is portrayed with absolute fidelity, in that error due to the human element is lacking in the accumulation of the data it records. It has often been urged, however, that an aerial photograph is only a picture; that it has not, for instance, the names of streets, the names of property owners, the types of buildings and occupancy designated thereon, and a number of other things that are shown on the usual detail map. This is true, but the total cost of securing aerial photographs in the first place and then by direct inspection adding such data to them is still but a fraction of the cost of securing such data by old methods. It may be noted in passing that even when the surveyor, or a man intent upon correcting an old map, takes an old map no matter how perfect into the field with him, he must place on that map not merely the description of things that are not shown thereon but also certain marks or lines or sketches which are conventions representing objections themselves, while with the aerial photograph as a plan to take into the field all that is needed in the way of interpolation is data concerning objects.

PROCEDURE FOLLOWED

The following is the procedure which has been found to be peculiarly adapted to tax assessment studies. Aerial photographs are taken of farming districts and fairly open suburban areas in such a way and at such a height that contact prints from the negatives of these aerial photographs show a scale of about $1''$ equals $800'$. Densely built up areas are so photographed that contact prints show a scale of approximately $1''$ equals $400'$. Enlargements are then made of a section of the original negative, such a section being usually about $4''$ x $5''$ and technically known as the "heart" of the negative. While the variations in the scale due to relief in even rather rough ground are not so great as to invalidate the use of the photograph as a true scale or plan, still it is desirable to have as much of the photograph as possible scale some

predetermined feet per inch. The usual plan is to make the enlargement so that it scales as desired on some one horizontal plane which will most closely approximate the terrain in which the user is interested. These enlargements are about 30″ x 40″ in size and are on black and white double weight photographic paper of a finish that will show pencil marks. The contact prints, size 7″ x 9″, are for field use and usually are placed in the hands of students or junior engineers who use them on location, designating all boundary lines of property parcels on the prints in yellow pencil.

SOME PRACTICAL RESULTS

On the large scale enlargements as a base the appraisal expert transfers all these property lines and so letters each enlargement that it is a complete layout map of the properties covered thereby. It is of interest here to quote the figures made public by the Middletown *Press* of Middletown, Connecticut, on February 27, 1925: 1,896 pieces of city property had been omitted from previous assessment list. The grand list recorded (before re-appraisal) 3,028 dwellings; aerial photographs proved the existence of 3,251; 223 had escaped taxation and thus unjustly burdened the city taxpayers. The grand list recorded 1,551 barns, sheds and private garages; aerial photographs showed 2,902; 1,351 had escaped taxation. The grand list recorded 111 stores, shops and public garages; aerial photographs showed 281; 170 had escaped taxation. On Main Street out of 248 pieces of property, 49 were omitted from the list. In Middletown the grand list was raised from $20,500,000 to $31,500,000 and the tax rate lowered from $30 to $24 per thousand. The grand list in East Haven, Connecticut, was raised from $6,900,000 to $13,170,000 and the rate lowered from $28.50 to $15 per thousand. In Manchester, Connecticut, the grand list was raised from $35,000,000 to $52,000,000 and the rate lowered from $18 to $12 per thousand. Berlin, Connecticut, grand list raised from $3,900,000 to $7,640,000 and the rate lowered from $25 to $15 per thousand. A further comparison may be of interest. A re-appraisal study was made of New Britain, Connecticut, area 13 square miles by the old survey method. It took four years to make the maps and cost $60,000. A similar study was made of Middletown, Connecticut, area 43 square miles, by means of aerial photographs. To make the maps took but sixty days and cost $7,000.

Every use made of aerial photographs in tax assessment studies has shown similar results. It is, therefore, apparent that a most wonderful new method and instrument is available for the relief of communities overburdened by taxes.

Once an area is covered by aerial photographs their use is not restricted to re-appraisal studies. They can be made up to serve the city engineer and the planning commission and the zoning board as a map; and therefore help bear the burden of their original cost.

It must be noted that the above outlined method brings about that greatly to be desired condition, namely, *tax equalization*, and also writes off its own cost.

In summary, it has been definitely proven that the aerial photographic method in preparing maps for tax assessment studies is eminently practical; and there is no questioning the fact that the recordation of ground detail by means of aerial photographs markedly surpasses the older methods in accuracy, speed and cost.

AN ADVANCE IN PLANNING LEGISLATION

BY FRANK B. WILLIAMS
Associate Editor, National Municipal Review

New laws give city planning commissions in New York State added powers to preserve the integrity of city plans. :: :: :: ::

ACTIVELY supported by a committee representing twenty-two Westchester county municipalities and the Mayors Conference of the state, two laws[1] have just been passed in New York whose purpose it is to grant local governments all the powers necessary for effective planning. In so doing it has been necessary to give these communities generally certain powers long possessed by a few of them; to surmount certain difficulties never before satisfactorily dealt with, employing, for the purpose, methods found to be effective and legal in other connections; and to correlate and harmonize powers in order to make them more efficacious.

WHAT THE LAWS PROVIDE

The new acts are laws of 1926 chapter 690, applying to cities, and chapter 719, applying to incorporated villages. They are state wide empowering acts. Any city or village in the state, therefore, may make use of them in so far as it sees fit, but no community is compelled to give up any of its old methods and adopt new ones. A similar law for towns was introduced in the legislature but was not pressed for passage at this time. In brief these laws:

(1) Contemplate that a planning board, established by the legislative authorities of the municipality, shall prepare a master plan showing present and future streets and parks, the same not to be binding in any way but merely to serve as a guide for comprehensive planning.

(2) Contemplate and empower the legislative authorities of every city and village to establish an official map of streets and parks. Main thoroughfares will be early determined for outlying districts. Later the secondary streets will be filled in through co-operation with the land owners.

(3) Require the legislative authorities to consult the planning board before they lay out streets or parks on the official map, or make changes therein. This secures careful and comprehensive planning.

(4) Prevent the issue of permits for buildings on streets not on the official map, supplying, however, adequate safeguards for exceptional cases.

(5) Prevent the issue of permits for buildings in the beds of streets shown on the official map, supplying, however, adequate safeguards for exceptional cases. This preserves the integrity of the city plan.

(6) Prevent the filing of plats containing new streets without the written approval of the planning board. Such new streets then become part of the official map. This stops the erection of buildings on misfit private developments, and thus stops misfit street layouts.

[1] Based upon a model act to be found in a pamphlet issued by the Regional Plan of New York and Its Environs, 130 East 22nd Street, New York City, entitled "Planning of Unbuilt Areas in the New York Region—a Form of State Enabling Act with Annotations," by Edward M. Bassett.

(7) Permit the planning board in proper cases to lessen street widths shown in plats and in lieu thereof set aside playgrounds.

(8) Permit the planning board to accommodate developers in making reasonable zoning changes for their plats.

The city and the village laws are identical in purpose, and practically identical in wording. The methods by which the city law given in full at the end of this article obtains the above results are, briefly, the following:

STRONG CONTROL OVER PLATS AND MAPPED STREETS

The city is authorized to appoint a planning commission, with power to make a master plan of all the features of the city essential to its development. An important part of such a plan is the system of streets and parks. Such a plan the city legislature is empowered to adopt or "establish," thus laying out the streets and parks. This *planning* lay-out must not be confused with the acquisition of the land and the construction of the street or park, sometimes referred to as a lay-out of these features; the object and result of the planning lay-out of these features is merely to make it sure that when the city does acquire the land and do the work for this purpose, it shall be according to plan, except, of course, in so far as the plan is formally and deliberately changed.

The building inspector in the new law is forbidden to issue a permit for a building unless it is served by a street; or for a building in the bed of a mapped street; but on appeal to a board of appeals, the applicant can in exceptional cases obtain a permit, subject to such conditions as will safeguard the interests of the city. The prohibition prevents the land owner from disregarding the city plan and making it a nullity; the appeal eliminates the injustice in exceptional cases, so that in no case shall the land owner be wronged.

The reader will notice that under this law the exceptional case in planning is dealt with in the same way as in zoning. It is the task of both planning and zoning to regulate the subdivision of land with its infinite variety of contour, situation and previous development, and the construction upon lots of a wide range of value, so produced, of buildings for all sorts of uses. In these subjects it is not the law that creates the exceptions; they exist in the nature of things and no general rules, however fully expressed, can abolish them. All that can be done is to provide a mechanism for recognizing the exception when it arises, and treating it justly. This can be accomplished only by lodging discretionary power with some authority; in which case there must be an opportunity for a court review, to remedy any possible misuse of this discretion.

REASONABLE RESERVATIONS FOR OPEN SPACES

In approving plats the planning board is authorized to require the subdivider to make a reasonable reservation of land for small parks or playgrounds. The more intelligent realtor recognizes the fact that such a reservation almost invariably increases the value of the remainder of his tract more than sufficiently to pay for the land set aside. It cannot be said, however, that this is necessarily true in all cases; much less that any fixed ratio can be demanded. If—to give one of many possible illustrations—the developer lays out his tract with broad streets and wide deep lots, it is evident that there is less need of public open space, and it may be claimed that no such spaces are essential. Here again

no general rules that are just and expedient and therefore valid in law, can be laid down; the only method of obtaining justice being to give discretion, subject to court review.

In approving plats the planning board is in fact planning the undeveloped parts of the community in detail, subject to the general city plan. The new law gives the board the power to vary, within fixed limits, the zoning ordinance of the city, thus authorizing it to zone these parts of the community subject to the general zoning regulations. Planning and zoning are a part of the same general subject, and the best results can be obtained only by treating them as such. This is especially true in the undeveloped portions of the community, where there is room for give and take, so useful where the possible solutions of problems are many.

The new law gives planning boards considerably greater power than they have heretofore had. It is to some extent capable of abuse, as it is of use to the public advantage. A liberal grant of power is always subject to misuse; but it is only by granting ample powers to our administrators that we can expect to obtain results of value. On analysis, however, it will be found that in every case the city council can undo the wrongs committed by its planning board. It may be expected, therefore, that the acts of the board will remain in force except in the rare cases of gross abuse.

Fundamental in these laws is the principle that in this age of complexity and ever increasing mass of detail, administration must more and more be committed to administrative boards subject to court review. This principle, applied successfully to such subjects as the fixing of rates of public utilities and the securing of safety and proper working conditions for labor, is equally applicable to planning and zoning.

The text of the law applying to cities follows in full.

AN ACT [1]

To amend the general city law, in relation to official maps and planning boards.

Section 1. Chapter twenty-six of the law of nineteen hundred and nine, entitled "An act in relation to cities, constituting chapter twenty-one of the consolidated laws," is hereby amended by adding thereto a new article, to be article three, to read as follows:

ARTICLE 3

§26. Official map, establishment. Every city by ordinance or resolution of the legislative body which has the authority to lay out, adopt and establish streets, highways and parks may establish an official map or plan of the city showing the streets, highways and parks theretofore laid out, adopted and established by law, and such map or plan is to be deemed to be final and conclusive with respect to the location and width of streets and highways and the location of parks shown thereon. Such official map or plan is hereby declared to be established to conserve and promote the public health, safety and general welfare. Said ordinance or resolution shall make it the duty of some appropriate official or employee

[1] New York Statutes 1926, Chapter 690.

of said city at once to file with the clerk or register of the county or counties in which said city is situated a certificate showing that the city has established an official map or plan.

§27. Planning board, creation and appointment. Such legislative body of each city is hereby authorized and empowered to create by resolution or ordinance a planning board of five members to be appointed by the mayor with authority to remove any member of such board for cause and after public hearing. Of the members of the board first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years, one for the term of five years, from and after his appointment. Their successors shall be appointed for the term of five years from and after the expiration of the term of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment for the unexpired term. In any city in which there is a planning commission created in accordance with article twelve-a of the general municipal law the ordinance or resolution instead of providing for the appointment of a new planning commission or board may provide that the existing commission shall continue, the members thereof thereafter to be appointed in accordance with the provisions of said article twelve-a, with the powers and duties as specified for a planning board appointed as provided in this article in addition to the powers and duties as specified in said article twelve-a; provided, however, that in any such city section two hundred and thirty-eight of the general municipal law shall not be in force.

§28. Planning board, officers, employees and expenses. The mayor shall designate the member of said planning board to act as chairman thereof; or on his failure so to do, the planning board shall elect a chairman from its own members. It shall have the power and authority to employ experts and a staff, and to pay for their services and such other expenses as may be necessary and proper, not exceeding, in all, the appropriation that may be made for such board. Each city is hereby authorized and empowered to make such appropriation as it may see fit for such expenses, such appropriation to be made by those officers or bodies having charge of the appropriation of the public funds.

§29. Official map, changes. Such legislative body is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map or plan of the city so as to lay out new streets, highways or parks, or to widen or close existing streets, highways or parks. At least ten days' notice of a public hearing on any proposed action with reference to such change in the official map or plan shall be published in an official publication of said city or in a newspaper of general circulation therein. Before making such addition or change the matter shall be referred to the planning board for report thereon, but if the planning board shall not make its report within thirty days of such reference, it shall forfeit the right further to suspend action. Such additions and changes when adopted shall become a part of the official map or plan of the city, and shall be deemed to be final and conclusive with respect to the location of the streets, highways and parks shown thereon.

The lay-out, widening or closing, or the approval of the lay-out, widening or closing of streets, highways or parks by the city under provisions of law other than those contained in this article shall be deemed to be a change or addition to the official map or plan, and shall be subject to all the provisions of this article.

§30. Planning board, reports on matters referred to it. The body creating such planning board may by general or special rule provide for the reference of any matter or class of matters to the planning board before final action thereon by the public body or officer of said city having final authority thereon with or without the provision that final action thereon shall not be taken until said planning board has submitted its report thereon or has had a reasonable time to be fixed in said rule to submit the report.

§31. Planning board, general reports. The planning board shall have full power and authority to make such investigations, maps and reports and recommendations in connection therewith relating to the planning and development of the city as to it seems desirable providing the total expenditures of said board shall not exceed the appropriation for its expenses.

§32. Approval of plats. The body creating such planning board may by ordinance or resolution authorize and empower the planning board to approve plats showing new streets or highways. Before such approval is given, a public hearing shall be held by the planning board which hearing shall be advertised in an official paper or in a newspaper of general circulation in said city at least ten days before such hearing. The planning board may thereupon approve, modify and ap-

prove, or disapprove such plat. The approval required by this section or the refusal to approve shall take place within forty-five days from and after the time of the submission of the plat for approval; otherwise such plat shall be deemed to have been approved, and the certificate of such city as to the date of the submission of the plat for approval and the failure to take action thereon within such time, shall be issued on demand and shall be sufficient in lieu of the written endorsement or rather evidence of approval herein required. The ground of refusal of approval of any plat submitted shall be stated upon the records of such planning board.

The ordinance or resolution authorizing the planning board to approve plats shall make it the duty of some appropriate official or employee of said city to file with the clerk or register of the county or counties in which said city is situated a certificate showing that said planning board has been so authorized and shall specify the officer or employee of said city who shall issue in its behalf the certificate of failure to take action as aforesaid.

§33. Approval of plats, additional requisites. Before the approval by the planning board of a plat showing a new street or highway, such plat shall also in proper cases show a park or parks suitably located for playground or other recreation purposes. In approving such plats the planning board shall require that the streets and highways shall be of sufficient width and suitably located to accommodate the prospective traffic and to afford adequate light, air and access of fire-fighting equipment to buildings, and to be co-ordinated so as to compose a convenient system; that the land shown on such plats shall be provided with proper sanitary and drainage conditions; and that the parks shall be of reasonable size for neighborhood playgrounds or other recreation uses. In making such determination regarding streets, highways and parks the planning board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

§34. Record of plats. No plat of a subdivision of land showing a new street or highway shall be filed or recorded in the office of the county clerk or registrar until it has been approved by a planning board which has been empowered to approve such plats, and such approval be endorsed in writing on the plat in such manner as the planning board may designate. After such plat is approved and filed, subject, however, to review by court as hereinafter provided, the streets, highways and parks shown on such plat shall be and become a part of the official map or plan of the city. The owner of the land or his agent who files the plat may add as part of the plat a notation if he so desires to the effect that no offer of dedication of such street, highways, or parks or any of them is made to the public.

In so far as provisions of law other than those contained in this article, require the approval of a plat, map or plan of land by the authority of the city, as a prerequisite of its record, or allow it to be recorded on failure of the city to approve or disapprove of the same within a given time, said provisions shall not be in force in so far as they apply to plats, maps or plans of land within the limits of any city which has established an official map or plan and authorized a planning board appointed by it to approve plats of land within said city showing new streets and highways, under this article.

§35. Permits for building in bed of mapped streets. For the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided, however, that if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals or other similar board in any city which has established such a board having power to make variances or exception in zoning regulations shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the city. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which parties in interest and others shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official publication of said city or in a newspaper of general circulation therein. Any such decision shall be subject to review by certiorari order issued out of a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

§36. Municipal improvements in streets; buildings not on mapped streets. No public sewer or other municipal street utility or improvement shall be constructed in any street or highway until such street or highway is duly placed on the official map or plan. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, the applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board in any city which established a board having power to make variances or exceptions in zoning regulations, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway lay-out. Any such decision shall be subject to review by certiorari order issued out of a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

§37. Planning board, changes in zoning regulations. The body creating said planning board is hereby authorized by ordinances or resolution applicable to the zoning regulations of such city or any portion of such zoning regulations, to empower it, simultaneously with the approval of any such plat either to confirm the zoning regulations of the land so platted as shown on the official zoning maps of the city or to make any reasonable change therein, and such board is hereby empowered to make such change. The owner of the land shown on the plat may submit with the plat a proposed building plan indicating lots where group houses for residences or apartment houses or local stores and shops are proposed to be built. Such building plan shall indicate for each lot or proposed building unit the maximum density of population that may exist thereon and the minimum yard requirements. Such plan, if approved by the planning board, shall modify, change or supplement the zoning regulations of the land shown on the plat within the limitations prescribed by such legislative body in said ordinance or resolution. Provided that for such land so shown there shall not be a greater average density of population or cover of the land with buildings than is permitted in the district wherein such land lies as shown on the official zoning map. Such building plan shall not be approved by the planning board unless in its judgment the appropriate use of adjoining land is reasonably safeguarded and such plan is consistent with the public welfare. Before the board shall make any change in the zoning regulations there shall be a public hearing preceded by the same notice as in the case of the approval of the plat itself. On the filing of the plat in the office of the county clerk or registrar such changes, subject, however, to review by court as hereinafter provided, shall be and become part of the zoning regulations of the city, shall take the place of any regulations established by the board of estimate or other legislative authority of the city, shall be enforced in the same manner and shall be similarly subject to change.

§38. Boards of appeal. Any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the city, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the court within thirty days after the filing of the decision in the office of the board.

Upon the presentation of such petitions, the court may allow a certiorari order directed to the planning board to review such decision of the planning board and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the order shall stay proceedings upon the decision appealed from.

The planning board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such order. The return must concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

If, upon the hearing, it shall appear to the

court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

§2. This act shall take effect immediately.

RECENT BOOKS REVIEWED

MUNICIPAL BUDGET MAKING. By R. Emmett Taylor. Chicago: University of Chicago Press, 1925. Pp. 230.

This volume results from a study commenced in 1922 covering available literature, which the author found to be rather meager, and forty-six returns received from questionnaires submitted by the New York Bureau of Municipal Research to municipalities of varying size, location, and form of government. In the questionnaire subjects were grouped under the headings (1) preparation of the budget, (2) hearings, (3) ratification, (4) appropriations, (5) the budget as a controlling plan, (6) tax limitations, (7) current audit, (8) the budget calendar, and (9) the form of government. The information received through the questionnaires was subsequently checked and amplified by personal visits to several of the cities. The author in dealing with the scores of problems in the short space of a small book has sketched practices and procedures without delving deeply into any one phase. He has explained principles that have been quite well developed during the last few years and noted the extent to which these principles have been generally applied in larger municipalities. Observations and recommendations are added.

Many of the author's suggestions give rise to question marks. In one place he considers the advisability of having the personnel manager selected by the council, implying that this method might tend to keep the position outside the influence of politics. He suggests, among other methods, the desirability of having municipal employees recruited by the federal government. He considers that the best plan for obtaining an independent audit of accounts, in addition to the audit by the comptroller, would involve an accountant chosen for yearly periods by some responsible city organization— "say the Chamber of Commerce." He adds that "this proposal would afford an efficient check as often as deemed necessary throughout the year and would remove the position from the realm of politics." Again, in proposing a procedure to be followed in preparing the budget he would make the comptroller the principal budget officer and merely give the mayor or city manager an opportunity to appear before the council committee at hearings. In other words the real executive, if there is one, would have very little to say regarding budget proposals.

The attempt of the author to generalize upon principles of budget procedure without carefully considering the application of the principles to the several different forms of government leads to considerable confusion. Budget procedure cannot be considered in the abstract. One procedure may be best for those who believe in decentralization of authority, and another would apply for those who believe in centralization of authority. In other words the procedure should differ under the city manager, commission, and council mayor forms. Those who believe in the city manager form of government, for instance, would not agree with the author that the comptroller should be the budget officer unless he acts in a staff capacity for the city manager. It is along these lines that many of the recommendations deserve more explanation.

Practically all of the information contained in the book was obtained from municipal experience. There is an absence of comment upon the budget forms and procedures in the more progressive state governments and the federal government where so much has been accomplished during recent years. These experiences could well be included, by way of suggestion, in a book on municipal budget making. There also is a paucity of mention regarding the important budget problems associated with the preaudit, the control of the lump sum, the single fund versus multiple funds, classification for budgeting salaries and wages, and the place of the functional or activity classification in budget making. The sum total, nevertheless, presents a book filled with a great deal of miscellaneous information from which budget officers of discernment may receive valuable suggestions. The book will probably be of more service to this group than to persons who are not familiar with budget making and who desire for the first time to understand what it is all about.

MORRIS B. LAMBIE.
University of Minnesota.

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PRINCIPLES AND PROBLEMS OF GOVERNMENT. By Charles Grove Haines and Bertha Moser Haines. New York: Harper & Bros., 1926. Pp. 663.

In eight pages of contents, three of preface, six

hundred forty-five of text and seven of index, this book takes us over the road from Pithecanthropus to William E. Borah. The cosmic field of things political is organized into four parts. Part one, 74 pages, an introduction to the study of the principles and the problems of government, comprises three chapters and is necessarily a sketch of methodology. Its effect in bewildering a beginner would probably be considerable.

Part two, in true western fashion, devotes three chapters covering 106 pages to "problems of public control of government." The last is the only term defined. The space distribution seems noticeable, e.g., public opinion in France gets 13 lines with no mention of army, church, press or industrialists; while our American women's clubs get 31 lines.

The authors' preface has classified their work as "prepared primarily for use in an elementary course in colleges and universities." How can one control what he knows not of? The order of chapters seem, therefore, confusing. But the tables of specific facts as to initiative, referendum and recall (pages 106–7, 109, 112–13) appear exact, modern and useful. Political parties and civil service are also telescoped into Part two and the whole treated rather from the Hiram Johnson standpoint.

With Part three, seven chapters, two hundred forty-six pages, we come to what used to be thought the field of government: constitution, federalism, legislation, the executive and the courts. The treatment is world-wide ranging at ease from Vermont to China to Jugo Slavia to Oregon. The reviewer is unable to understand on what principle the readings suggested were included. The net result might well be to confirm the student in whatever convictions a high school course in civics might previously implant.

Part four takes up "special problems," five chapters, two hundred nineteen pages. The first chapter on the budget seems factual and fairly modern. The second, on public utilities, seems antiquated. The third and fourth on international relations and organization are suggestive and, one hopes, fairly distasteful to the Hiramites.

We close with a chapter of thirty pages "What is the function of government?" but leave the query unanswered.

The strength of the book is its facts. Its weakness is vague inclusion.

W. L. Whittlesey.

Princeton University.

Fresh Air and Ventilation. By C.-E. A. Winslow. New York: E. P. Dutton & Company, 1926. Pp. 182.

There is probably no subject in the whole realm of sanitary science about which there is more earnest argument but less real understanding among people generally than ventilation and its relation to personal and public hygiene. Many of the public's most positive convictions about ventilation are based upon completely discredited theories, and there is, even among the leaders of community thought and action, a vast confusion with respect to the facts about ventilation which modern experimental science has brought out in the past decade. Everyone knows that "fresh air" is an essential of good ventilation, but few know what "fresh air" is or why it is necessary. That there ought to be some relation between the cubic contents of an enclosed space and the number of persons occupying it is quite generally appreciated but what this relation should be under varying circumstances is more or less a mystery. The necessity of maintaining the right degree of temperature and the right amount of humidity of air in dwellings and work rooms is universally recognized, but very few know why or how these conditions should be maintained. Some method or "system" of ventilation that will replace used air with unused air in homes and work rooms is commonly regarded as of vital importance, but why it is necessary and what method or "system" is best are questions to which only the sanitarians, and relatively few of these, can furnish the right answers.

To illustrate the bearing which this widespread ignorance of ventilation fact has upon some of our most vital problems of public administration, consider school ventilation. Dr. Winslow says; "On the first of January, 1925, there were seventeen states with no laws or state-wide regulations covering school ventilation. There were seven states with laws containing vague but pious aspirations to the effect that schools should be 'adequately' or 'properly' ventilated or so ventilated as to avoid the accumulation of the products of respiration in harmful concentration. There were twenty-four states specifying definite standards for school ventilation based on the Pettinkofer theory." As the writer points out, a major premise of the now discredited Pettinkofer theory was that the influence of bad air is due to the presence of toxic organic substances excreted into the atmosphere from the human body. Dr. Winslow says further: "It would be

safe to say that approximately one-half the schools built in the United States are today constructed under official regulations requiring the installation of systems of ventilation capable of supplying thirty cubic feet of air per minute for each child—which means, of course, systems of fan ventilation. Yet this whole complex legal and administrative structure rests upon the fundamentally erroneous conception that the object of ventilation is to dilute nonexistent poisons. . . . It would seem obvious that the compulsory use of positive 'plenum' systems of supplying thirty cubic feet per minute of warm air is not only costing the taxpayers of the United States millions of dollars but is, at the same time, working very real injury to the health of our school children."

This is but one of many illustrations of the effect which ignorance and misinformation about ventilation have had upon public administration; many more might be cited and are cited by Dr. Winslow in his thorough discussion of the subject. He has summarized in 182 pages the results of scientific study of ventilation in this country and abroad during the past twenty years particularly, with special emphasis on the recent findings of the New York State Commission on Ventilation which represent the last word on the subject.[1] In clear cut, non-technical terms he has separated the truths from the untruths and half truths so positively that there should no longer be any doubt as to what good ventilation is and how it can be secured in homes, schools, public buildings offices, industrial plants, and other places. He demolishes with his weight of fact many of our most cherished beliefs about ventilation but he offers in their stead a constructive program for individuals and communities which ought to have the immediate attention of all citizens.

Certainly no one in this country is better qualified than Dr. Winslow to deal with this subject. As chairman of the New York State Commission on Ventilation, he has directed the most thorough study of ventilation which has yet been made. As a teacher of public health and director of community health service, his work has given him high and authoritative standing in this country and abroad. We heartily recommend this, his latest contribution to sanitary science and practice to the readers of this journal.

C. E. McCombs, M.D.

[1] Ventilation, report of the N. Y. State Commissioner on Ventilation, E. P. Dutton and Company, New York, 1923.

Common Wealth. By C. G. Campbell. New York: The Century Co., 1925. Pp. xii, 472.

It is not always easy to follow Mr. Campbell's argument, though in the fashion of literary men writing on economics he has a disconcerting way of arriving at conclusions which seem much more significant than the reasoning by which, explicitly, they are supported. One should not come to the book for an understanding of competitive economics in the text-book sense; it does not explain "the mechanism of exchange" as Jevons called it, and at many points it is clear that the author does not understand how the mechanism works, or "tends" to work. He speaks of "productive" exchange (p. 95) as exchange of "surpluses," though elsewhere he seems implicitly to recognize that goods are produced in order to exchange and that exchange is an indirect mode of production. He does not understand the meaning of cost or recognize that financial control is of the very essence of competitive individualism—which unfortunately does not distinguish him from some economists of the cloth. In particular (p. 96) he treats cost as an absolute, whereas the law of comparative cost is the basic principle of organization in an exchange system. Of course we do not expect anyone but a professional economist (and not many of those) to have sound views on money and capital, but here especially Mr. Campbell shows flashes of insight in many conclusions which have no obvious foundation in his argument.

The work falls into three "books" dealing with The Natural Economy, The Artificial Economy, and Broad Questions of the Dual Economy. In a general way the first two are "scientific," the last "practical."

In the final book it becomes clear that the object of the whole is to propound a rather interesting theory of Utopia. All the way along, the evils which are emphasized are luxurious consumption and waste through "acquisitive exchange," the meaning of which is dark to the reviewer. Wealth should be used in the discovery and pursuit of "a great racial purpose of life" (p. 361), which is also obscure, beyond the fact that it is biological in character. Finally, the root evil is found in liberty! (pp. 361, 370, etc. Cf. p. 226, where St. Paul's diagnosis is approved). The crying need, then, is "control," and one reads on eagerly to learn who is to do it. In Chapter V (Book III) the methods of even distribution of property and the placing of "an

emasculated state in control of the sequestrable constituents of wealth" are designated as "absurd." On page 400 the solution is revealed. It is to "*leave*" (reviewer's italics) the control of wealth in the hands of the "capitalistic minority, which has demonstrated its competence, and can be regulated in any way that we choose." So Utopia is already here, and the only problem is why the author wrote the searching arraignment of existing society which fills all but a few pages of his book.

F. H. KNIGHT.

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A HISTORY OF AMERICAN IMMIGRATION 1820–1924. By G. M. Stephenson. New York: Ginn and Company, 1926. Pp. 316.

THE MELTING POT MISTAKE. By H. P. Fairchild. Boston: Little, Brown and Company, 1926. Pp. 266.

No field of modern discussion has been marred more by prejudice than the immigration problem. Blood has been not only thicker than water but more compelling than the cooler processes of thought. The average man has thought of the immigration problem in terms of himself or of his immediate ancestry. Race prejudice has too often controlled legislation toward the new comers. But on the other hand, the policy of the wide open door has sometimes been carried to the point where it seemed to careful observers that the distinctively American spirit in community life, in government and in industry might be jeopardized.

Although all Americans, except the Indians, are in a sense immigrants, yet from the first years of our government, from the earliest colonial days to the present time, those who have been prior in point of time have looked with no little misgivings on the streams of immigrants that have followed them. The most amazing thing about the immigration problem is the likeness of the arguments of one generation to the contentions of another. Here, as in other enduring issues, there seems to be no new thing under the sun. The great debates and changes in immigration policy in the past illuminate the future.

It would seem proper, then, that a history of immigration should begin with the colonial development of America. To deal with the causes of immigration into the United States only since 1820 omits a vital and interesting part of the story, for the motivating forces then of importance had been determining factors for almost two centuries, despite the fact that the religious and political incentives were of less importance and that the economic factor had become the leading cause of immigration during the nineteenth century.

The first nine chapters in Dr. Stephenson's "History" on the European background are intended to introduce the reader to some of the conditions and events which have set in motion accelerated or retarded emigration from European countries. It is really a history of European emigration rather than of American immigration. The author makes a contribution from this point of view to the literature on the subject, although he fails to develop his theme beyond a sketchy analysis based mostly upon private documents, letters, etc., heretofore unused.

His chapters devoted to "Immigrants in America" likewise deal in a sketchy manner with the development of our policy toward the foreigner. Instead of writing a digest of congressional opinion, he could have digested congressional opinion. Very little analysis of the existing laws is attempted. His treatment of particular problems, such as naturalization, is wholly inadequate, as are the chapters devoted to oriental immigration. However, his search for original sources opens up vast fields for research wherein a more intensive study can be made of particular problems.

The immigration problem is a biological one at the present time. Opponents of restriction in general and the present law in particular speak of the "Nordic Myth" and at present are directing their attack at the very heart of the law itself, when they deny that one race or nationality is better fitted for assimilation than another. Unless one is on his guard he finds himself debating the age-old question of the relative importance of environment and heredity in the determination of human qualities.

Dr. Fairchild has made an important contribution from the biological viewpoint. Pointing out that we inherit our racial and acquire our national qualities or characteristics, he sets forth in a delightful and convincing manner how various symbols, such as "the melting pot," "assimilation" and "Americanization" have delayed proper restriction of immigration and prevented a real solution of the problems created by the presence of the excessive numbers of aliens within this country. His conclusions throughout vindicate the present law in its drastic restriction of

the "new" and the probibition of oriental immigration. His chapters on "Americanization," "Enforced Patriotism" and "The Duty of America" should be read by everyone interested in Americanization and naturalization. The keen analysis of these problems leads one to expect constructive suggestions from the author. The naturalization laws need revision. Unquestionably so. But what changes should be made? One seeks in vain for the answer. "There should be established some genuine, searching tests of fitness for citizenship. Just what these tests should be it is not so easy to say" (page 193). Again, we read, "What we need are genuine tests of assimilation," yet no suggestion is given (page 196). His statement that the present quota basis is discriminatory in favor of the old immigration (page 132) is misleading, since it obtains the same results as the national origin plan which he endorses, yet which he acknowledges is a basis difficult if not impossible of calculation (page 85). The quota basis gives us an equitable distribution of the old and the new immigration in a practical manner. If national origin is a practical basis, then the author missed the outstanding opportunity of setting forth the methods to be used by those who are seeking for the answer. At best the national origin results will be "negative" and an "estimate." It would seem better under such conditions to retain the present quota plan indefinitely in the future.

The solution to the immigration problem today is to keep and strengthen our present restrictive legislation in order that we may have time to overcome the mistakes resulting from the symbol of the melting pot.

Roy L. Garis.

Vanderbilt University.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC.,

Required by the Act of Congress of August 24, 1912,

Of NATIONAL MUNICIPAL REVIEW, published monthly at Concord, New Hampshire, for April 1, 1926.

State of New York, County of New York, SS.

Before me, a Notary Public in and for the State and county aforesaid, personally appeared H. W. Dodds, who, having been duly sworn according to law, deposes and says that he is the editor of the National Municipal Review and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:
Publisher, National Municipal League, 261 Broadway, New York.
Editor, H. W. Dodds, 261 Broadway, New York.
Managing Editor.....
Business Managers.....

2. That the owners are: (Give names and addresses of individual owners, or, if a corporation, give its name and the names and addresses of stockholders owning or holding 1 per cent or more of the total amount of stock.) The National Municipal Review is published by the National Municipal League, a voluntary association, incorporated 1923. The officers of the National Municipal League are Frank L. Polk, President; Carl H. Pforzheimer, Treasurer; H. W. Dodds, Secretary.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

H. W. DODDS
Editor.

Sworn to and subscribed before me this 4th day of May, 1926.
[seal] Notary Public, Westchester Co., New York; GEORGE BARRY.
Certificate Filed in New York Co. (My commission expires March 30, 1927.)

PUBLIC UTILITIES

EDITED BY JOHN BAUER
Public Utility Consultant, New York City

One More Telephone Decision.—*According to plans previously announced, our intention had been to present in this issue the arguments in favor of the reproduction cost as the basis of valuation for public utility rate making. This was designed as one of a series of short articles on principles and methods of regulation, with the object of preparing the foundation for more scientific and effective policies.*

The article promised for this number, however, will be postponed to the next issue in order to make room for an article on the New York City telephone case, which has just been decided. This case is not only of immediate news value, but excellently illustrates the legal and technical complexities with which regulation has been almost strangled.

We are pleased, therefore, to present the following article as a study admirably fitted for the purpose of the contemplated series of studies on general regulatory questions and policies.—EDITOR.

The New York telephone rate case has been characterized as "an example of futility in present methods of public utility regulation."[1] I wish to call attention to another milestone on this long road of litigation which began in 1913 and promises to continue for at least a number of years more.

The New York state public service commission has just rendered a decision which allows the company an increase in New York City revenues of approximately 12 per cent. As a 10 per cent surcharge has been in effect for two years by order of the federal court, an additional 2 per cent on the telephone bill will not matter much to the average subscriber.

What does matter is the manner in which this decision, one in a series of past and prospective commission and court actions, has been reached.

SIGNIFICANCE OF THE DECISION

This order by the commission is of more than ordinary significance in view of the fact that two opinions, a majority opinion and a minority opinion, each of 70 printed pages, have been handed down, and that the split in the ranks is due directly not to a difference in conviction or principle, but to the degree of constraint of the court felt by the members of the commission.

THE BACKGROUND

The present investigation has been before the commission since January, 1924. Since September, 1924, a master appointed by a statutory court has likewise been conducting hearings. These are expected to continue throughout this year, or perhaps into 1927. Hence, the decision of the commission will be finally reviewed by the court in the light of the master's report.

Last December the company appealed to the court for a modification of its temporary surcharge from 10 to 35 per cent. The appeal was denied by the court on the ground that the commission was to hand down shortly its decision, and presumably it would square with the facts and the constitutional principles of rate making.

In its statement, however, the court specifically enumerated points of error in the order issued by the commission in January, 1923, and declared that if the commission in the coming order "disregards those principles . . . it will be time enough then to bring the matter to the court's attention."

QUESTIONS AT ISSUE

As the property involved in the investigation represents a book cost of about $450,000,000, the controversial matter ranged over the whole gamut of the rate making scale. The outstanding issues were (1) the rate base, involving reproduction cost, deduction for depreciation, and going value; and (2) rate of return.

After quoting the statutory court on each of the important points enumerated above, the minority opinion of the commission states:

> So, whatever might be the opinion of the commission as to those disputed matters, is thus rather immaterial under the circumstances.

[1] Bauer, J., *American Economic Review*, September, 1925, p. 586 ff.

Thus, Chairman Prendergast and Commissioner Van Namee hold up their hands and surrender their constitutional powers of *rate making*.

RATE OF RETURN

The completeness of the surrender is especially evident in its own version of the controversy regarding the rate of return. The statutory court referred to this point as follows:

> The commission stated that the rates fixed by its orders were intended to yield a net return to plaintiff of only 7 per cent, and this court held this was error; it being customary to allow as a reasonable rate of return for regulated business like this one 8 per cent, unless a departure from that rate should be shown to be warranted.

Compare the statement just cited with the one by the supreme court of the United States in a decision of June 11, 1923:

> The probable return based on the value and the probable income found by the commission would be nearly 7¼ per cent. It must be borne in mind, as pointed out in Galveston Electric Co. v. Galveston, *supra*, that, since dividends from the corporation are not included in the income on which the normal federal tax is payable by stock-holders, the tax exemption is, in effect, an additional return on the investment. A return of 7½ per cent—in addition to this tax exemption—can not be deemed confiscatory. (Ga. Ry. v. R. R. Comm. 264 U. S. 625, 633.)

Even if no testimony had been offered on the public side it would seem as if the minority could take this statement by the highest court into consideration, and in addition take judicial notice of the fact that (1) money rates have declined since 1923; (2) the New York Telephone Company certainly could obtain capital at an appreciably lower rate than the Georgia Railway Company; (3) the New York Telephone Company pays to the A. T. & T., the parent company, 4 per cent of its gross receipts, allowed in this case as an operating expense, which is partly for "financial assistance."

But the city, through its expert, Dr. Milo R. Maltbie, introduced all the evidence that could possibly be got together, and from which the minority opinion copiously quotes, proving that the average cost of capital to the company is less than 6½ per cent, that its securities on the market sell at a lower yield, that it could even issue 7 per cent common stock at par. Nevertheless, the minority felt so overawed by the statement of the statutory court that even with respect to rate of return they dissent from the majority; instead of 7 per cent they would allow rates to yield 8 per cent.

DEPRECIATION

Likewise with respect to depreciation the minority dissents solely because of constraint of court. The company has accumulated a reserve of $80,500,000 for the New York City properties, but claims that "existing depreciation" amounts to only $43,000,000. Hardly anyone could marshal the facts more clearly or argue more cogently why the full amount of the reserve should be deducted than the minority does in the opinion.

It finds that (1) the company has claimed all along and still claims that its annual depreciation charges were needed to make good all depletion in capital assets; (2) the "existing depreciation" testified to by the company limited itself merely to "apparent physical deterioration, plus certain minor adjustments (based on present apparent condition) for manifest inadequacy limited to a three-year period"; (3) that it did not consider at all (a) "depreciation not discoverable upon physical inspection," (b) "inadequacy beyond that which is manifestly (as a matter of present knowledge) to occur in three years," (c) "inadequacy resulting from age, physical change or supersession by reason of new inventions or discoveries, or changes in the art, or changes in public demand or in public requirements," (d) "obsolescence which may occur to affect the service value of the plant and property caused from any of the agencies mentioned in (c)," (e) "replacements due to destruction of physical units of plants and property by reason of extraordinary casualties"; (4) "that actual dollars have been appropriated out of revenues and charged against operating expenses and transferred to depreciation reserves for all of the above purposes, and that the balance in depreciation reserves must contain such sums, the amount and extent of each or any of which it is impossible to determine, except it would appear that the entire balance in such reserve contains all that has been appropriated for such purposes, and at the present time unexpended."

But in spite of all these *facts* the minority, because of the statutory court's *abstract pronouncement*, deducts only the so-called "existing depreciation." It does, however, reduce the company's current depreciation charge under operating expenses by an amount which does not seem to have any definite basis. The majority deducts the entire reserve.

GOING VALUE

On the subject of going value the entire commission reached agreement, allowing $10,000,000 ($7,500,000 for New York City and $2,500,000 balance of state). One witness for the company claimed a going value of $47,500,000 and another testified to a sum of $54,300,000.

These "values" the commission found to be deduced by a process that "is completely speculative and can only produce such answers as the individual opinion of the estimator envisages as the fitting assumptions on which the calculations are based."

The record also shows that "Of course there is nothing in the past financial history of this company to warrant an allowance of going value if that alone were the test; it being uncontradicted that four years after its organization in 1896 it declared a $3,000,000 stock dividend, and that it has continuously since organization paid dividends on its common stock averaging more than 8.1 per cent. . . . So far as the books of the company are concerned, all money used for extensions has been treated as a capital charge or as an ordinary current expense and charged against rates."

The $10,000,000 allowance is made purely because the statutory court, apparently *without specific investigation* of the facts charged the 1923 order of the commission with error for not setting out a separate amount as going value.

REPRODUCTION COST

There was not much difference between the majority and the minority with respect to the basic valuation of the physical properties. Both adopted bases substantially above actual cost but below the reproduction cost figures claimed by the company. It is of interest to note here that *the difference* in the total reproduction cost of all elements of property in the state *between the two witnesses for the company exceeded $106,500,000.*

In view of the confused stands taken by various commissions and courts relative to this phase of valuation, the action of the commission under this item seems to be justifiable.

CONCLUSION

The results so far obtained in the New York telephone case inevitably lead one to the following conclusions:

1. The New York state public service commission, created so auspiciously in 1907 and standing guard for many years to protect the public interest, finds itself now, twenty years later, powerless to cope with the huge problem of rate making.

2. In spite of the mounting complexities of regulation, the commission is not provided with a staff even as sufficient as ten years ago. The commission declares that "The city of New York was the only party to the investigation which presented any testimony other than that presented on behalf of the company." The time when the regulatory body itself took the initiative in protecting the public has passed.

3. The commission, under existing undefined legislative powers, is in awe or constraint of federal courts to an extent that it tends to relinquish its own judgment in any given case, and as a result to establish precedents that will add to the existing stumbling blocks to orderly and rational processes of regulation.

NATHANIEL GOLD.
The College of the City of New York.

✠

What Is Ownership in a Utility?—Some months ago Professor W. Z. Ripley of Harvard University started an extremely interesting discussion which has been taken up widely by publicists and the press. He pointed out that to an amazing degree the actual investors and owners in modern business are divorced of actual management and control. This applies particularly to railroads and other public utilities. It refers not only to bondholders but also to stockholders, and is brought about by various financial and legal devices including preferred stocks, non-voting common stocks, holding companies, bankers' control, advisory and management corporations, etc.

As to the facts, Professor Ripley is, of course, correct and he has rendered a great public service by calling striking attention to a situation which had been placidly accepted without thought by practically everybody conversant with industrial developments. He has offered no particular solution, but he points to the serious consequence that may follow the further cumulative operation of the forces which produced the present conditions.

The important question is, what shall be done about the matter? The interstate commerce commission in the proposed Nickel-Plate railroad consolidation, refused to grant its approval because certain groups of stockholders were not properly treated in the plan. Shortly

after this decision, the board of public utility commissioners of New Jersey refused to authorize an issue of non-voting stock. Both decisions have been extensively lauded because of the effort to preserve the powers of ownership and to prevent a further separation from management and control. So far as railroads and utilities are concerned, shall we insist hereafter that only such securities shall be issued as will embody the rights and duties of ownership? Shall we prevent a financial structure and all special devices which will separate the actual investors from the management and control of the utilities?

This opens an extremely important and fruitful field for special investigation and study. The answer, however, must not be uncritically accepted along the lines indicated by the interstate commerce and the New Jersey commissions. There is room for doubt as to the positive good to be obtained from such repressive action. It appears likely that even if the issuance of non-voting stock, and all other legal and technical devices for divorcing ownership from actual management are forbidden, the great bulk of investors in railroads and utilities, as well as all other large industries, will not exercise the rights and duties of management and control. This is true, of course, where the securities are in the form of bonds and the holders are technically creditors, but practically it applies also to common stock of which the holders are recognized as *par excellence* the owners of the properties.

In the case of bondholders, naturally, there is no right to participate in management and control except in the case of receiverships. The fact, however, should be clear that at least 75 per cent of the total actual investment in railroads and public utilities consists of bonds and not stocks. Consequently by the very form of securities issued the bulk of the investors are immediately and irretrievably deprived of management and control. Shall we, therefore, in the future prevent the issuance of bonds and insist upon a major proportion of stock issues? Likewise, shall we prohibit further flotation of preferred stock, which similarly foregoes any share in management but which has been used to a rapidly increasing extent in recent years?

But if we require a greater proportion of common stock issues, we are likely to hinder the acquisition of additional capital as needed for service. The financial structure in many cases is such that stocks cannot be issued for new capital, and bonds furnish the only practical source for additional funds. Shall we, therefore, insist upon an entire reconstruction of the financial organization of the companies so that the power of management may be conveyed to the actual investors?

If, however, all of the investment were in the form of common stock, we should still be confronted with the fact that the great majority of holders would not exercise the right of management. This is established almost beyond question by the experience of all corporations with a large number of stockholders. Comparatively few attend stockholders' meetings, and usually the officers come armed with proxies and are in a position to perpetuate their own official existence. Only under exceptional circumstances are stockholders aroused to the extent of attending meetings, or of carefully selecting their representatives to whom the proxies are given. For the most part, they practically cannot participate in active management. They acquire the holdings incidentally to their active participation in some other business or profession. They treat the stock as mere investments, and they have the same object as the bondholders, to obtain a return upon the investment. They really view themselves as creditors, and not as actual owners and managers of the business.

Is not this situation so deeply lodged that it cannot be changed? If so, then the dangers that arise from the separation of investment and management, for the most part, must be reached in a more realistic way than by the prevention of the technical practices which have become established. If we do insist upon capital stock issues, with full voting power, will the right be exercised and will not the actual management still rest in the hands of those who have little money at stake? There would still be the same inducement, possibly in some lesser degree, to speculative control by those who have little financial risk, at the probable sacrifice of underlying public interests. At least so far as railroads and public utilities are concerned, whatever else may be done, it appears desirable to recognize the facts and place upon the Interstate Commerce Commission and the state commission requisite powers to deal adequately with management, not only to protect the consumers but also the rights of the investors in the properties.

Hitherto the commissions have been vested primarily with the duty to safeguard the con-

sumers. The special public interest has been established and regarded primarily from the consumers' standpoint as to reasonable rates and proper service. The chief object has been to restrain the *owners* from imposing excessive charges. But now it appears that the actual owners do not control and are themselves at the mercy of the management which exists largely independent of ownership. The real public interest, therefore, has come to extend not only to consumers, but investors, including common stockholders.

If this view is correct, it will be necessary to give the commission sufficient control over finances and management so as to safeguard all investments. When securities have been issued, their permanent safety should be entrusted primarily to public authority rather than to management which has little investment. If this policy were incorporated into law and proper administrative machinery provided, it would be largely immaterial in what form securities for new capital are issued, whether bonds, preferred stock, non-voting common or ordinary common, or whether the management had put any money into the business. All investors would be considered practically as creditors in the public enterprise, and all would be equally protected through defined policies and methods of regulation.

If we are not to provide for such an extension of regulation in the interest of the investors, what effective course is to be taken to meet the condition and dangers so clearly presented by Professor Ripley?

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Secretary Hoover Against Federal Regulation. —In the *Bulletin of the Investment Bankers' Association*, April 30, 1926, Secretary Hoover discusses the movement that has gained some headway during the past few years, for federal regulation of utilities, especially in the production and transmission of electricity. Mr. Hoover believes that the present state regulation is adequate to meet the requirements of public control. Even in the electric industry he believes that 96 per cent of the business comes directly and completely under state control, while the rest can be better supervised by state machinery, notwithstanding the interstate traffic, rather than to resort to an expensive and complicated federal system. He does not conceive that the business will become dominantly interstate in character, as the railroads whose traffic is 70 per cent to 80 per cent interstate.

Mr. Hoover appears to look with more approval upon the work of the state commissions than the facts warrant. That "their regulation has been effective" may well be disputed. But the cause of their failure would apply equally to federal regulation; the remedy is to employ scientific methods instead of guess-work, and not to transfer jurisdiction to a federal agency. In many instances the conveyance of control to local municipalities might even be desirable. Jurisdiction naturally should correspond with the facts of the industry. Where the business is dominantly national, effective control must be federal. For the great bulk of regulation there appears little ground for present disagreement with Mr. Hoover, that regulation is properly a state function. But it is quite conceivable that serious interstate problems will develop rapidly with the extensive consolidations of electric properties and the appearance of "super" and "giant" power. It is time to give thought to the problem, even if we reject any proposed immediate remedy of federal control.

There will undoubtedly be rapidly increasing interstate power transmission, and there will be interstate questions which will prove troublesome. The difficulties have already been foreshadowed in a recent decision by the supreme court of the United States which Secretary Hoover fails to consider.[2] Apparently, if a company produces power in one state and transmits it to another, and there sells it to a second company which makes the distribution to the local consumers, the transmission is deemed to be interstate, beyond the control of the state where the distribution takes place. If this decision controls and if interstate power transmission increases according to present prospects, we may soon be forced to look for federal control, notwithstanding the reluctance to start new machinery for federal regulation, with its inevitable complications with state control.

[2] Missouri v. Kansas Natural Gas Co., 265 U. S. 298; decided 1924.

JUDICIAL DECISIONS

EDITED BY C. W. TOOKE
Professor of Law, Georgetown University

Liability of Ohio Municipalities upon Contracts Implied in Law.[1]—The liability of municipalities to account as upon a contract implied in law for benefits received is often limited by constitutional or statutory requirements that contractual obligations shall be incurred only through certain prescribed acts. In many instances to apply the same principles of recovery for benefits received as in the case of a private corporation would result in the practical nullification of the statutory inhibitions which have been enacted to protect the taxpayers from unjust burdens. The English courts carry this rule to the extent of refusing to grant recovery to contractors who have performed work under agreements which do not comply with the requisites of the statute (Hunt v. Wimbleton Local Board, 3 C. P. D. 408; Young v. Leamington, 8 App. Cas. 517). The same rule was followed in this country in Zottman v. San Francisco, 20 Cal. 96, and Hague v. Philadelphia, 48 Pa. 527, and many of the earlier cases seemed to hold that no recovery would be allowed even for money paid for municipal bonds, which after negotiation were declared void. The early decisions of the United States supreme court to this effect were later modified upon the rehearing in Brenham v. German American Bank (1892), 144 U. S. 549, and the liability of the municipality to account for moneys thus received is recognized. When such moneys have actually gone into the treasury of the municipality as part of the public funds, the prevailing doctrine now is that the city is liable therefor in an action *ex contractu*. (Thompson v. Town of Elton, 109 Wis. 589.)

But a greater difficulty arises, where the action is brought for services rendered or material supplied under a void contract. While goods thus supplied may be recovered back if they exist in their original form (Superior Mfg. Co. v. School District, 28 Okla. 293), they may have gone into the construction of public works and to permit a recovery for their value would effectually nullify the restraining statutes, and under these circumstances the earlier case held recovery against the city could not be permitted. In no state have such statutes been more drastically upheld as preventing recovery of the value of service or goods furnished to a municipality under an agreement which did not comply with the statute than in Ohio. But in the recent decision in Sommers v. Putnam County Board of Education (148 N. E. 682) the supreme court of that state has taken advanced ground and materially extended the doctrine of quasi contractual liability to municipal corporations.

Somers, in his petition to the court below, averred that he was the father of four children all of whom were of compulsory school age and eligible to admission to the high school of Riley township, Putnam county, Ohio; that he and his four children resided more than four miles from any high school, to wit, four and one-half miles from the nearest high school which was the high school maintained by the defendants, boards of education of Putnam county and Riley township; that he requested first the township board and then the county board to furnish high school work for his children within four miles of their residence or to furnish transportation for his four children to and from the defendants' high school, all of which requests were refused and rejected. After stating that he had been compelled to and did transport his four children to and from the high school for the past school year, the plaintiff sued the two boards of education for the expense thereof after he had presented an itemized bill for such services and which had been refused and rejected. The court of common pleas sustained a demurrer to the petition and this judgment was affirmed by the court of appeals. The Ohio supreme court reversed the decisions of the lower courts and overruled the demurrer, Miss Justice Allen saying: "Plaintiff in error concedes that there is no contractual relationship existing between the school boards and the plaintiff in error, but contends that, under the familiar rule of quasi contracts, this action lies for money expended in transporting

[1] Reprinted (with revision) from *Georgetown Law Journal*, May 1926.

his four minor children to a high school outside of the four mile limit. With this contention we are in accord. The parent has discharged the obligation first of the local school board and next of the county school board."

The Justice continued that the plaintiff in error had conferred a benefit upon the school boards by performing a duty made mandatory upon the latter by the General Code Sections 7764–1 and 7610–1, and, further, that by performing such duty, the plaintiff was the proper person to provide transportation to and from the high school for his children and that he was not a mere intermeddler. The court was satisfied that there was a dutiful intervention in the discharge of another's legal obligation according to the principles enunciated by Professor Woodward in his "Law of Quasi Contracts," at page 310. Professor Woodward writes that "Acts of beneficial intervention which may result in quasi contractual obligation, fall within the following classes:

"(1) The discharge of another's legal obligation.

"(2) The preservation of another's life or property.

"The performance of another's legal obligation may be regarded as dutiful, if it appears:

"(a) That the obligation is of such a nature that actual and prompt performance of it is of grave public concern.

"(b) That the person upon whom the obligation rests has failed or refused with knowledge of the facts, to perform it; or that it reasonably appears that it is impossible for him to perform it.

"(c) That he who intervenes is under the circumstances an appropriate person."

Although a quasi contractual obligation upon the school boards is thus discernible, there may have been genuine doubt as to a recovery thereon in view of the rigid observation and construction by the Ohio courts of the General Code sections which, in effect, hold that "there is no implied liability ex contractu of a municipality, and it can become obligatory only in the manner fixed by statute. To state a good cause of action against a municipality in matters ex contractu the petition must declare upon a contract, agreement, obligation or appropriation made and entered into according to statute. A petition on account merely or *quantum meruit*, in such cases is not sufficient." Ellis' Ohio Municipal Code (1924) 710.

Thus in McCormick v. City of Niles, 81 Ohio St., 246, 251, 90 Northeastern Reporter, 803, it is stated that "the admission that plaintiff could not recover of the city on an implied contract is the recognition of what we have repeatedly decided when parties sought to hold a municipal corporation liable on *quantum meruit*, or implied contract." This is practically a verbatim repetition of the decision in City of Welleston v. Morgan, 65 Ohio St. 219 (1901), 62 N. E. 127, "Tooke Cases on Municipal Corporations," p. 942. In the case just cited the court agreed that prior to the enactment of Section 1693, Rev. St., which provides: ". . . And no contract, agreement or obligation shall be entered into except by ordinance or resolution of the council, nor any appropriation of money for any purpose be made except by an ordinance; every ordinance appropriating money shall contain an explicit statement of the uses and purposes for which the appropriation is made; the power or authority to make a contract, agreement or obligation to bind the corporation, or to make an appropriation, shall not be delegated; and every contract, agreement or obligation, and every appropriation of money made contrary to the provisions of this section shall be void against the corporation, but binding upon the person or persons making it . . . ," there were holdings by the Ohio court which seemed to recognize implied municipal liability, but since the enactment of the statute just quoted from, a strict adherence to the restrictive nature of its patent limitations of recovery on *quantum meruit* have prevailed. But in Youngstown v. National Bank, 106 Ohio St., 563, the decision was to the effect that where a mayor of a municipality, acting pursuant to paragraphs 4250 and 4373 of the Ohio General Code, appoints emergency patrolment, and represents to a bank that the municipality is without funds either to employ or to pay such emergency patrolment, and procures the bank to pay the emergency patrolment upon the payroll or certificate of the city auditor of such municipality, and the sum so paid is the fair and reasonable value of such services as therefor fixed by the municipality, the bank will be subrogated to the rights of such emergency patrolment and be entitled to recovery from the municipality. There is at least a modicum of *quantum meruit* in this recovery but it must be borne in mind that there was a peculiar exigency in this instance and the bank's act

of loaning money solely upon representations from the mayor may have been the only means of securing proper and efficient patrolment of the city. It still remains, however, that the Ohio courts are loath to admit an exception to the strict observance of the rule against quasi contractual recovery.

H. L. Lind.

BRIEF NOTES ON RECENT DECISIONS

Streets and Highways—Motor Vehicles Act of Montana Sustained.—In State v. Johnson, 243 Pac. 1073, the supreme court of Montana sustained the validity of the Motor Vehicles Act of that state. The act in question authorized the railroad commission to regulate all motor vehicles engaged in the transportation of persons or goods for hire on the public roads. The court holds, in conformity with the decisions of other jurisdictions, that the act is within the police power of the state and that it does not involve the delegation of legislative power to nor vest judicial power in the commission. In coming to this conclusion, the court says: "Confronted with the necessity of the regulation of this rapidly increasing mode of transportation and the impossibility of adequately protecting the public by general legislative enactments, the details of classification and regulatory requirements are generally left by the legislative bodies of the several states to such commissions as ours, or those of like character, and such action is upheld by the court as a proper and constitutional method of meeting the new conditions arising, and to be neither a delegation of the powers of one department of the government to another, nor class legislation."

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Streets and Highways—Power of County to Grant Franchise.—The supreme court of North Dakota in a decision handed down March 6, 1926 (Morton County v. Hughes Electric Co., 208 N. W. 108), denies the authority claimed by the plaintiff to control the granting of franchise rights to public service corporations in the state highways within its limits. The plaintiff sought to enjoin the defendant from carrying its electric transmission line over the Missouri River upon a bridge known as federal aid project No. 100, the west half of which lies within the county of Morton. The state highway commission had granted the defendant a permit, so that the question of conflict of authority between it and the county was brought directly in issue. The court, in discussing the action, held that in view of the statute creating the state commission and giving it power to "determine the character and have general control and supervision of the construction, reconstruction, improvement, repair, and maintenance of all state highways . . . including all bridges" the county had neither authority to grant a franchise, nor to bring an action to enjoin the granting of such a right. Singularly, the court held further that no power to grant such a franchise had been given to the state commission. The conclusion to be drawn from the reasoning of the court is that the state highway commission is the proper party to contest the validity of the exercise of franchise rights in the public highways committed to its care, and in case it neglects or refuses to act, the responsibility rests only with the attorney-general of the state. The case will illustrate the serious conflict of jurisdiction which may arise in similar cases between local and state authorities and in some instances involve the regulatory power of the federal government as well.

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Legislative Control over Rate of Wages on Municipal Works.—In Connelly, Commissioner of Labor, v. General Construction Company, 46 S. Ct. R. 126, the supreme court of the United States declared invalid the statute of Oklahoma providing "that not less than the current rate of per diem wages in the locality where the work is to be performed shall be paid to . . . laborers, workmen, mechanics or other persons employed by contractors or subcontractors for the execution of any contract or contracts with the state," on the ground that it is so vague and indefinite as to violate the conditional requirement of due process of law. Since the decision in Atkin v. Kansas in 1903, 191 U. S. 207, the validity of statutes regulating the rate of wages on public works, whether of the state or of its municipalities, has been seldom questioned. In that case, the statute prescribed the same rule of ascertainment, but the question of its indefiniteness was not raised. In Ryan v. New York (1904), 177 N. Y. 271, a similar provi-

sion applicable to wages on municipal works was upheld, and the same language used in the statutes of several other states has been uniformly sustained upon the authority of Atkin v. Kansas. Justice Sutherland, who gave the opinion of the court, applied the same test as in his opinion in Adkins v. Children's Hospital, 261 U. S. 525, in which in setting aside the women's minimum wage law of the District of Columbia he said: "The standard furnished by the statute for the guidance of the board is so vague as to be impossible of practical application with any degree of accuracy." It will doubtless come as a surprise to those in charge of municipal contracts, that the prevailing rate of wages in the locality cannot generally be ascertained with practical definiteness. Mr. Justice Holmes and Mr. Justice Brandeis concur in the result but upon the ground that under the facts of the case no violation of the statute was proven. The effect of the serious limitation upon the police power of the states, especially as it affects the control over wages upon municipal contracts, will doubtless be far reaching. An extended review of this case appears in the *Harvard Law Review* at page 871 of volume 39.

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Annexation of Territory—Subjection of Agricultural Lands to Taxation.—In Wertz v. City of Ottumwa, 208 N. W. 511, decided April 6, 1926, the supreme court of Iowa adheres to the local rule long established, that agricultural lands included within a city are not subject to taxation for general city purposes unless it can be shown that the property proposed to be taxed derives a benefit from being within the corporate limits (Fulton v. Davenport, 17 Iowa 404; Durant v. Kaufman, 34 Iowa 194). The Iowa statute authorizes cities under certain conditions to annex contiguous territory by resolution of the council. The plaintiff sought an injunction on the ground that the statute is unconstitutional in that it permits the taking of property without compensation and violates the due process clause of the constitution. The court in affirming the decree of the district court in denying the injunction, applies the general rules that, in the absence of constitutional restrictions, the legislature has plenary control over the boundaries of its municipalities and may provide for their extension without the assent of the residents of the city or of the territory to be annexed. Property is not "taken" under the constitutional requirement of compensation when it is merely subjected, on a further contingency, to the liability of an increase in taxation (Sharpless v. Mayor of Philadelphia, 21 Pa. 147; People v. Mayor, 4 N. Y. 419).

The Iowa rule that agricultural property lying within the boundaries of a city may not be subjected to taxation for general municipal purposes, unless benefited thereby, is opposed to the great weight of authority (Kelley v. Pittsburgh, 104 U. S. 78). A rule similar to that adopted in Iowa was applied in Kentucky until changed by the constitution of 1890, which provided that taxes should be uniform upon all property subject to taxation "within the limits of the authority levying the tax" and prohibited the exemption of any property from taxation except so far as set forth in the state constitution (Briggs v. Town of Russellville, 99 Ky. 515).

GOVERNMENTAL RESEARCH CONFERENCE NOTES

EDITED BY ARCH MANDEL

San Francisco Bureau of Governmental Research.—The Bureau has taken part in the active discussion by civic and commercial interests of ways and means for improving street traffic conditions in San Francisco. Present plans contemplate the organization of a self-constituted citizens' commission, representing all interests affected in any way by street traffic to be self-financed and to provide for a scientific survey of the traffic situation in its entirety under the direction of some recognized expert.

L. R. Merrick has resigned as field representative of the Bureau to become secretary of the Astoria (Ore.) Chamber of Commerce. E. W. Butler succeeds him.

The Bureau held one of its largest and most enthusiastic annual dinner meetings on May 26. Reports for the year were given and five trustees were elected.

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Kansas City Public Service Institute.—Dr. Joseph Harris, who has been making a nation-wide study of registration for election for the Social Science Research Council, has been retained by the Public Service Institute and the Civic Department of the Chamber of Commerce for the past two weeks to make a study of registration in Kansas City and to draft a permanent registration bill. It is expected that this bill will be presented to the next session of the legislature. The general support which this bill is receiving in Kansas City indicates that it should have a good chance of being adopted.

The other work of the Institute for this month includes budget work, county government study, and beginning of work on a street cleaning study.

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New Bedford Taxpayers' Association.—The New Bedford Taxpayers' Association is just getting started in its work, and is now preparing a general study of the organization of the different city departments, which will be published in the near future as an explanation of the budget figures for 1926.

Studies have already been made of the sinking fund surplus, which will be turned over to the sinking fund commissioners in the near future with definite suggestions for the use of the existing surplus. It will be necessary to obtain legislative sanction for the use of this money, and that cannot be done until next winter's session of the legislature.

⚜

The Taxpayers' Association of New Mexico.—The principal work of the Taxpayers' Association in New Mexico for the next three months will be in assisting in the preparation of county and municipal budgets. Representatives of the Taxpayers' Association visit all counties and as many cities, towns, and villages as possible. They prepare the budget for each locality and bring a copy of it to the state tax commission. These representatives also sit with the state tax commission during the hearings and assist in the determination of the necessary tax levies.

⚜

Cincinnati Bureau of Municipal Research.—John B. Blandford, lately secretary of the Bureau of Research of the Newark Chamber of Commerce, has been selected as the director of the Cincinnati Bureau of Municipal Research, which was reorganized and began operating on June first. The stage is set for a large and active program and our best wishes go to Blandford. The Ohio group is particularly glad to welcome him to the state.

⚜

The Committee of Seventy.—The Committee of Seventy of Philadelphia, of which E. T. Paxton was recently made director, is an organization which has been in existence for twenty-two years. According to a bulletin just published, this organization has done considerable work for clean elections by investigating frauds, following up complaints of various kinds, and aiding in obtaining registrars and inspectors. It is also preparing a program of election law revision for the next session of the legislature. The Committee also watches the operation of the city charter, opposing undesirable changes.

MUNICIPAL ACTIVITIES ABROAD

EDITED BY W. E. MOSHER

National Air-Ways.—The beginning of the year 1926 marks a complete fusion of the two important companies organized for air transport in Germany. At the same time a provisional council of control was appointed which would exercise supervision over the development of the policies and administration of the new organization. Both the imperial government and that of the several states are represented on this council but do not have a majority. Their right of representation is based first upon their subventions and second upon their interest in the expansion of the air service.

Since the private companies are dependent upon the co-operation of the cities largely through subventions that take the form of landing fields, it is urged that the cities should also be represented upon the council of control. Of the forty landing fields now in use, about thirty are in the possession of the municipalities or of local companies to which the municipalities have contributed the area for landing places and, in some instances, buildings and street approaches.

Some space is devoted to discussion of the type of contributions that should be made in the future for the purpose of proper development of this important means of communication. Subventions from the major units of government, that is, the empire and the various states, are determined according to the number of kilometers flown and are at present paid at the rate of two marks per kilometer. The effort is being made to reduce this amount so that in the course of three years this support may be entirely withdrawn. The subventions from cities or the other units of government are in the form of a guarantee for certain lines and are customarily handled through regional associations of representatives of the different local units. At the present time such payments amount to about as much as those made by the empire.

The growing interest among both the governmental authorities and the public operators springs from the conviction that air transport is to play as important, if not a more important part, in modern civilization as the railroads did in the development of the 19th century.—*Zeitschrift fur Kommunalwirtschaft* (Berlin).

Municipal Heating.—The high cost of fuel in Germany has recently given a very decided impetus to centralized heating under municipal auspices. The development since the war has been so marked that Dr. Kuhberg, who designed the heating plant of the technical high school in Charlottenburg, Germany, maintains that it will not be long before houses will be supplied with heat in the same way as they are now supplied with water, gas and electricity. The amount of heat will be metered in the same way as with these other household necessities. In the main, the most advantageous arrangement seems to be a combination of power and heating plants. By this means it is claimed that the utilization of the heat units in coal can be increased from 20 per cent to 80 per cent.

In some cities there has been a tendency to use electrical plants situated in the heart of the city which have been more recently supplanted, or supplemented, by plants in the outlying districts, for the purpose of generating heat to be supplied to public buildings, factories and private residences. A number of the most important cities, however, have already built municipal heating plants or have buildings in process. Among these are Hamburg and Kiel.

In several cities excess steam from turbines and high pressure boilers is utilized. It also seems possible to make more and more use of the gases liberated in the manufacture of heating and illuminating gas and in burning garbage and the like.

There are no statistics which conclusively prove the success of these enterprises in Germany on a strictly economic basis. So far as is known, the cost of municipal heat is lower than the cost of generating the heat in individual houses or other buildings. The elimination of the unpleasantness and labor involved in heating separate buildings is not considered in this estimate.

It is recognized that public heating is only at the beginning of its development and that both expense and technical problems must be solved before it is universally adopted.—*Danziger Statistische Mitteilungen* and *Zeitschrift fur Kommunalwirtschaft* (Berlin).

Self Insurance for Public Authorities.—The president of the Mutual Society of Public Administration Insurance, Senator Seeliger of Belgium, summarized in a public statement last March the achievements and plans of this organization which got under way in 1919. According to a statement the annual premiums for 1926 amounted to over a million and a half francs. The success of the system is measured by the increasing number of local governmental units affiliating themselves with it and the absence of any defections; further, by the fact that in the division of fire insurance something like 450,000 francs have been returned on the premiums within the space of six years.

The special desirability of insurance against accidents is due to a law of 1903 which requires that the employer be responsible for accidents suffered by employees in the course of their work, even when they themselves may be to blame. This effects not alone manual laborers but any workers on the payrolls of the local government authorities.

Recent developments within the past year have been in building up the divisions of pensions and of accident and health insurance.

It is pointed out that these various fields are handled on a strictly actuarial basis, that there is no profit at any point, that the administration permits of flexibility in the handling of funds and determination of benefits according to the desires of individual communities so long as the latter do not run counter to sound insurance policy and further that the administration is carried on by a limited number of employees having a single inspection.—*Mouvement Communal* (Brussels).

✻

Joint Personnel Councils.—A movement is under way for the organization of joint personnel councils in the local government circles of France. In this the central government is supplying the model. The movement has the backing of the minister of the interior, who recently addressed a circular to the prefects of the various departments. The councils are to consist of an equal number of officials on the one hand and employees and workers of the local units, who are to be designated by the prefect or the Association of Mayors, on the other.

The council is to be authorized to take up any matters of common interest, but especial attention is given to the importance of standardizing working conditions and salary rates. The desirability of having the latter determined with reference to the cost of living is discussed at some length. Agreements on the above matters are not obligatory. The minister of the interior affirms his confidence that the municipalities will take satisfaction in heeding the conclusions of the council.

A further question that was especially emphasized was the possibility of co-operation between the councils in various local units, whereby employment could be secured for those employees who might be dismissed on account of reduction of force or for some minor difficulty or fault.

The minister of the interior concludes his communication with the following words, "I count upon your absolute co-operation in realizing my set purpose in this direction."—*Les Sciences Administratives* (Paris).

✻

Voting and Non-voting.—Detailed statistics have been brought together by the statistical bureau of Danzig with reference to the number of votes cast at the 1924 election for local representatives in the rural districts of Danzig. These data show, among other things, the distribution of votes cast for the various parties. Of special interest is the percentage of eligible voters who actually voted in 1924. The total figures cover 249 townships with the eligible list amounting to 62,839. Of this number 40,671 people cast ballots in the election. This is 65% of the total number. A supplementary table indicates the number of seats which fell to the different parties both in 1920 and 1925.—*Danziger Statistische Mitteilungen.*

✻

A Modern City.—The German-Austrian League of Municipalities is the sponsor of a new work of three volumes entitled "Modern Vienna" (Das Neue Wien). Some of the foremost officials in Austria and Vienna have participated in the preparation of this very comprehensive work. According to the advanced announcement, it is a four volume production, profusely illustrated and selling at $7.50 a volume. Judging from the table of contents, there is brought together here, in a most comprehensive way, the story of what a thoroughly socialized city is attempting to do in these post war years. From the advance notices the work would appear to give a very thoroughgoing review of the organization, functions and activities of a modern European city.

NOTES AND EVENTS

Cincinnati Boss "Retires".—The "retirement" of Rud. K. Hynicka as leader of the Cincinnati Republican organization presents a paradox. Contrary to received opinion he is going out not because he has been bossing but because he has not been.

For years he has reigned but not ruled. Not that he has been like the present kings of the earth, a puppet in the hands of a strong man. No, he has had no master, and what is more he has not been one.

Age has not affected Mr. Hynicka's intellectual power. He is now doing more and better work than at any time in the sixty-seven years of his life. But it is not in the field of politics. Increasingly he has given the best of his energies, not as of old to politics, but to business, to his theatrical and out-door amusement enterprises.

Again he has seldom been in Cincinnati, spending the greater part of his time in New York City where he maintains a home as well as an office. Thus both in engrossment and in residence he has been away from the arena of Cincinnati politics.

Politics is a jealous mistress, and especially is this true of practical politics. A potent boss cannot do other than boss. He must consent to be absorbed in the machine he directs.

Senator Penrose, of Philadelphia, shortly before his death said: "We have 20,000 Republican workers who bring out the vote and carry their precincts. I must know these men, and they me, what they are doing and how. I must always be on the job. If not, I am gone."

Thus it is that the Cincinnati Republican organization suffers not from too much bossism but from too little. Mr. Hynicka has not been on the job in the Penrose sense. There has been an absence of direction and of discipline. There has been lacking that instant, definite, sure but discerning action demanded by so militant and comprehensive an art as politics.

So the ever present seeds of dissension and indifference have sprouted. Stagnation and enfeeblement came. Jealousy, back-biting and double-crossing were manifested by ward captains. This because no boss was around to compose differences, to guide, to admonish, and if need be punish. Careerists cavorted around and individual ends surplanted the interest of the group, the gang ceased to be all here.

Culturally the Cincinnati Republican organization declined. Its leaders did not keep up recruitment of the highbrow unit. Hence when the new charter was offered two years ago with its provisions for a city manager and proportional representation, the organization had no intellectual acquainted with the literature of the subject and qualified to cope with the question on the stump or in the press.

And when the matter of candidates came up last fall in the councilmanic election there was hesitation and doubt, wavering and delay, want of knowledge what to do and how to do it under the P. R. system of voting.

I believe Hynicka's retirement from politics is on the level. Secretly it is thought he has desired for some time to get out of politics. But as everyone acquainted with the game knows it is no easy matter to relinquish leadership, and particularly so when no successor is agreed upon.

With the flare-up caused by his announcement and the mobilization of party reformers to wage battle in the Republican primary on August 10, be it known against not Hynicka but "Hynickaism," there has been a revival of activity by the organization workers.

Confronted with loss of control of the organization itself and not a mere defeat at a general election, there is a marked stiffening of lines, a getting up on toes, and a re-dedication to the motto of the Blaine Club: "vim, vigor and victory."

It is too early at the time of this writing to make a prediction of the result of the primary. With its back against the wall the organization may fight with its now traditional determination and resourcefulness. But decadence and division may have gone too far.

So if the present opposition to the organization is not so impressive as on frequent occasions in the past quarter century, neither is the organization so formidable. This gives evenness to the combatants.

ALFRED HENDERSON.

Cincinnati Times-Star.

The Battle of the Bill Board in Massachusetts.—Whatever the utility of outdoor advertising may be, it differs from other forms of publicity like newspaper and magazine advertising in that it is carried on within public view. For this reason it seems clear that it should be subject to careful regulation. Structural restrictions of bill boards, designed to secure their stability, and to prevent them from sheltering litter or disorder, or unduly hindering the access of light and air, are well established in this country. There is a growing feeling that regulation should go farther. Bill boards if wrongly designed, or, whatever their design, if wrongly located, are an offense to the eye, and the public is beginning to demand that this offense should be forbidden by law.[1] Regulations for this purpose are to be found in all other progressive countries. Many efforts have been made to obtain legislation to this end here; but quite generally it has been held by our courts under our unamended state constitutions to be an unconstitutional infringement on private rights.[2] In the movement to obtain such regulations by a change in this respect of its constitution, Massachusetts is the pioneer, having passed, in 1918, an amendment[3] providing that "Advertising on public ways, in public places and on private property in public view may be regulated and restricted by law."

After some difficulty and delay, legislation under this amendment was passed and regulations in accordance with it were enacted by the department of public works of the commonwealth and by the town of Concord.[4] The bill board interests have obtained a temporary injunction in the state court against the enforcement of these regulations. The constitution of the United States contains a clause[5] protecting private property similar to that in the Massachusetts state constitution,[6] and if defeated in the state court, the bill board people, it is generally understood, will carry their case to the supreme court of the United States. In defense of the amendment a Massachusetts Bill Board Law Defense Committee has been organized and has issued an appeal for funds.[7]

It seems probable to the writer that the defenders of bill board regulation will succeed in the Massachusetts courts. They appeal to the police power of the state, for the health, safety and general welfare of its citizens. The police power is a power expanding with the growing need of it under modern conditions. The position of the Massachusetts courts on similar questions such as zoning[8] has been progressive and we have no reason to fear that they will be any less so with regard to outdoor advertising. And if successful in the state courts there is little reason to fear defeat in the supreme court of the United States, which, in such cases, has so far almost without exception upheld the determination of the highest courts of the states.[9]

FRANK B. WILLIAMS.

[1] See Williams, "Law of City Planning and Zoning," Macmillan Co., N. Y., 1922, p. 396.

[2] The importance of the subject warrants the mention here of the fact that the Municipal Art Society of New York has issued a bulletin by the writer of this note giving a list of the statutes in this country regulating outdoor advertising. The bulletin is entitled "The Regulation of Outdoor Advertising by Law." It was originally issued in February, 1926, and is now in second edition.

[3] Art. L.

[4] For further particulars see Bulletin No. 15 of the Massachusetts Federation of Planning Boards, issued September, 1924, entitled "Legal Regulation of Bill Boards."

[5] Amendment XIV. . . . nor shall any state deprive any person of life, liberty or property without due process of law. . . .

[6] Part I, Article 10.

[7] "The Bill Board Interests Assail the Law and Constitution of Massachusetts—Defense Committee Organized—What Can We Do About It?"

[8] This is shown in a remarkable group of cases on the subject: Inspector of Buildings of Lowell v. Stoklosa, 250 Mass. Reports, 52; Brett v. Building Commissioner of Brookline, 250 Mass. Reports, 73; Bamel v. Building Commissioner of Brookline, 250 Mass. Reports, 82; Spector v. Building Commissioner of Milton, 250 Mass. Reports, 63.

[9] See Williams, "Law of City Planning and Zoning," p. 22.

Seattle's Charter Commission Reports.—Those who read Mr. Van Nuys's interesting article in the June REVIEW will remember that while the city manager charter was voted down on March 9, the proposition to revise the charter, through the agency of a commission of freeholders, was approved. The freeholders have now published their proposed charter calling for a city business manager but violating in some important respects the accepted principles of city manager government. It will be recalled that the fifteen freeholders elected were the first to file as candidates and that during the campaign they announced that, although they were opposed to the city manager amendment then before the voters, they were not opposed to the city manager plan with certain objectionable features removed.

The new charter proposal provides for a city council of fourteen to be elected at large but to be nominated by districts. The mayor, the city comptroller, the city treasurer, and the corporation counsel are to be elected at large. The city manager is to be appointed by the council which also appoints the library board, a police commission to have charge of the police department, a civil service commission, and a welfare commission to have charge of recreation and welfare. The city manager will appoint ten division heads although he will be unable to remove the commissioner of health without the consent of the council.

Although the mayor is elected by popular vote he is given little power other than of a ceremonial nature, except perhaps his membership on certain ex-officio committees. It will be seen that the effect of the charter is to diffuse authority. Doubtless the city manager will be held popularly responsible for the work of the city government although important matters such as the police department and the purchasing agent are outside his control. Purchases will be made by a board of contracts and control consisting of the mayor, the manager and the treasurer.

The city manager will share budget making power with the mayor and the comptroller. The three comprise the budget committee whose duty it is to receive the estimates and prepare the budget document for consideration by the council.

Obviously, the charter commission has delivered itself of a compromise document and it is difficult to share the optimism which they express over the product of their collective wisdom. How the police department, which in the words of the chairman of the charter commission "has been a prolific source of unseemly controversies to the disturbance of municipal business, and with baneful effect upon the good name of the city throughout the nation," is to be taken out of politics (as he states it will) by the time-worn expedient of an independently elected board is not clear to at least one distant reader of the new document.

The Seattle Municipal League, which sponsored the simple manager form at the election on March 9, has criticised sharply the complexity and diffusion of power contemplated in the charter commission's proposal.

New York Prosperity Not Dependent upon Population Congestion.—At a meeting on May 25 called by the Regional Plan of New York and Its Environs to hear a description of the preliminary plans for development of the New York region, Thomas Adams, general director, pointed out that the greatest need in planning is the control of land development and of the use, height and density of buildings. New York must be prepared to go further in zoning before it can arrest the evils of congestion. He took issue with those who claim that Manhattan cannot afford to provide ample street space for freedom of movement and ample areas for outdoor recreation for its young people. The prosperity of New York as a whole, and of Manhattan as a part of New York, does not depend upon an artificially created condition of congestion in the central areas at a time when there is plenty of space within reasonable commuting distance of the center.

Mr. Adams pointed out that decentralization of resident population has not proved a solution to congestion.

"You cannot correct congestion and you may increase it," he said, "by more transit lines and more commuting suburbs. Industry must be evenly distributed as well as population. Considerable areas of Manhattan must be conserved for residence in any balanced system of growth. Downtown Manhattan has probably reached the peak of its business intensity and large areas in the lower East and West Sides should be converted into residence. Some of the deteriorated parts of the city are so because of ideas being held as to their potentialities for uses they are never likely to have.

"The transportation and transit plan must follow lines that will help in promoting more balanced growth and in creating several centers. There is too great a tendency to focus every new transit facility on Manhattan. New centers should be encouraged to grow in the suburbs. Brooklyn is one that is well established. Queens and Bronx need to be further developed as main business centers looking only to Manhattan for special needs. Rapid transit and railroad belt lines should be developed so as to create larger centers in Staten Island, in Nassau County, and in New Jersey."

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Enumeration of Laws Reorganizing New York State Administrative Departments.—The constitutional amendment adopted in New York

state at the election of 1925 provided for the consolidation of the administrative activities of the state into not more than twenty departments. The work of the Hughes Commission in carrying out this amendment was described in the May issue by Richard S. Childs.

As we promised our readers at that time we list below the legislative acts passed by the recent legislature to give effect to the Hughes recommendations. The enactments constitute Chapter 78 of the Consolidated Laws, to be known as the State Departments Law. The following list gives for each act the chapter number of this year's session laws with the article number of Chapter 78 of the Consolidated Laws in parentheses:

Executive Department....	Ch. 548	(Art. 2)
Department of Audits Control.....	Ch. 614	(Art. 3)
Department of Taxation and Finance.....	Ch. 553	(Art. 4)
Department of Law.....	Ch. 347	(Art. 5)
Department of State.....	Ch. 437	(Art. 6)
Department of Public Works	Ch. 348	(Art. 7)
Department of Conservation.....	Ch. 619	(Art. 8)
Department of Agriculture and Markets.....	Ch. 646	(Art. 9)
Department of Labor.....	Ch. 427	(Art. 10)
Department of Education..	Ch. 544	(Art. 11)
Department of Health....	Ch. 349	(Art. 12)
Department of Mental Hygiene.....	Ch. 584	(Art 13).
Department of Charities...	Ch. 651	(Art. 14)
Department of Correction.	Ch. 606	(Art. 15)
Department of Public Service.....	Ch. 350	(Art. 16)
Department of Banking...	Ch. 352	(Art. 17)
Department of Insurance..	Ch. 353	(Art. 18)
Department of Civil Service	Ch. 354	(Art. 19)

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Detroit Street Railway Financing.—The department of street railways asked council to authorize a bond issue of $4,000,000 with which to buy needed street cars and busses. The authorization was refused because the city is too close to the seven per cent bond limit imposed by the laws of New York state, and because such an issue would crowd the annual budget beyond the two per cent limit imposed by the city charter.

In council it suggested that the D. S. R. might meet its requirements by issuing mortgage bonds. The charter specifically provides that such bonds may be issued by a vote of the people. These bonds if voted are a lien against the property of the department and not against the faith and credit of the city, and must be supported by a franchise which in case of default becomes the property of the bondholders. The street railway authorities apparently thought this step inadvisable; at least the request for a bond issue was withdrawn.

However, this proposal for mortgage bonds may eventually serve as a method of reducing the unusual financial burden under which the D. S. R. labors. At the present time there are $23,551,000 of street railway bonds outstanding, the interest and sinking fund charges of which must be met from street railway earnings. In addition, the purchase contract with the D. U. R. now amounts to $13,580,000. On this contract it is necessary for the department to pay $1,000,000 a year and at the same time to set aside in a sinking fund a sum, which, with interest earned, will be sufficient to make a final payment of the $7,580,000 in 1931. It is not the interest requirements, but the necessity of paying off the D. U. R. in so short a period of time, that embarrasses the department.

The book value of the D. S. R. is in the neighborhood of $53,000,000, the equity of the city being about $10,000,000. On this valuation it might be assumed that sufficient mortgage bonds could be issued to retire the contract with the D. U. R., thus substituting a reasonably small sinking fund charge on the mortgage bonds in place of the heavy payments required on the contract. The balance of the bonds might be used for such improvements as appear necessary. —*Public Business.*

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The $54,750,000 Bond Authorization in Philadelphia.—On May 18, the voters of Philadelphia, by votes approximating 244,000 for and 78,000 against, approved three separate propositions for the creation by the city of loans totaling $54,750,000—$35,500,000 to mature within 50 years, $12,600,000 within 30 years, and $6,650,000 within 15 years.

Of the total, $24,000,000 is to be used toward the construction and equipment of the Broad Street subway; $7,300,000 is for the opening, grading, and paving of streets; $4,500,000 is to be applied to the construction of sewers; $3,000,000 is to be used toward the construction of a sewage treatment plant; $2,100,000 is set aside for wharves; $2,000,000 is to be applied toward the construction of a hospital; $4,000,000 is to be

used toward the building of a convention hall; $1,750,000 is earmarked for bridges; $1,000,000 is available toward the construction of a city hall annex; $1,000,000 is for the removal of grade crossings; $1,000,000 is for the construction of buildings under the department of public welfare; $1,000,000 is for the beautification of the banks of the Schuylkill River; and the remaining $2,100,000 is divided among seven small items.

In addition to authorizing the creation of these loans, the voters approved three propositions to change the purposes for which certain money, totaling slightly over $2,530,000, previously had been authorized to be borrowed. These propositions provided for using $1,352,000 toward the construction of a convention hall, instead of toward the construction of a "Victory Hall"; $750,000 toward the improvement of certain highways, instead of for the construction of surface transportation lines; and slightly over $431,000 toward the abolition of grade crossings, instead of for the abolition of particular grade crossings.

J. HOWARD BRANSON.

✠

Bond Issues Approved.—The people at the spring elections seem to have been in a favorable attitude towards proposed bond issues. Note is made above of the $55,000,000 bond authorization in Philadelphia. On the same day Pittsburgh voters approved bond issues aggregating $19,902,000. The largest items were for street improvements and waterworks improvements. The Pittsburgh Chamber of Commerce endorsed the whole amount of the issue.

Chicago in its spring primary approved bonds amounting to $19,070,000. The bulk of this is sue, or $12,545,000, went for street improvements. The Chicago Bureau of Public Efficiency approved the proposals with two minor exceptions, one of which was an issue of $250,000 for the installment of traffic control signal lights which the Bureau believes should not be paid for from loans.

✠

Syracuse University Summer School in Social Sciences.—The School of Citizenship and Public Affairs of Syracuse University is holding a six weeks' summer school, June 18–August 4, in the social sciences, open only to teachers or prospective teachers in secondary schools. There will be special courses in all the social sciences and one course in their integration. Supplementary features include evening discussions in methods of community surveys and weekly faculty round tables on special subjects which will be attended by the students as observers on the sidelines. The right to join in a discussion is an exclusive faculty privilege. It is thought that the students through observing the faculty thus in action will gain an appreciation of the complexity of social subjects and of the cause and effect relationship between social phenomena.

✠

San Francisco Municipal Railway Employes Granted Wage Increase.—The platform men on the San Francisco street railway have been granted a wage increase of forty cents per day. Although the employes in all classes had asked for an increase of sixty cents per day, those other than the platform men were granted no increase whatsoever. Readers of the REVIEW will recall that a committee of the board of supervisors originally recommended that no increase be granted on the ground that it would lead to a deficit in the operation of the railway. Upon a re-hearing, however, the committee reported that if the board of public works, which has supervision over the compensation of municipal employes, saw fit to grant an increase of forty cents per day, the supervisors would pass the required legislation for a bond election for two million dollars to be applied to new construction and depreciation.

A great deal of the controversy turned upon the estimates of revenues supplied by various accountants; but according to the San Francisco Bureau of Governmental Research, current revenues, even if they fulfill to the most optimistic expectations of the accountants, will not be sufficient to meet the additional cost. The continuance of the five-cent fare under present conditions can therefore lead only to financial difficulties.

✠

Tennessee to Vote on Constitutional Convention.—The citizens of Tennessee will vote in August on the question of calling a constitutional convention. If the verdict is favorable the election of delegates will take place in November. Under the statute the proposed convention is restricted to consideration of nine subjects, the chief ones of which are the following:

Improvement of taxation and assessment systems.

County and municipal home rule.

Reduction in the membership of the general assembly.

Increase in the membership of the supreme court.

Authority for the supreme court to issue advisory opinions when requested by the legislature.

Four year term for governor.

Abolition of the fee system.

Easier amendment of the state constitution.

✻

Boston Metropolitan Police District Proposals.—The Boston Chamber of Commerce is behind the suggestion of the attorney general for the creation of a metropolitan police district to replace the present large number of separate police units. Under the existing arrangement there is no proper co-ordination among the forty communities of the district. At present the Boston police force is under state control and the proposed metropolitan force would be no encroachment on any existing home rule powers of the city. The success of the metropolitan district controlling water, sewerage and parks, no doubt, suggests that similar good results will flow from a consolidation of police activities throughout the metropolitan area.

✻

Cost of Water Waste.—The Philadelphia Bureau of Municipal Research estimates that the amount of water wasted each day in homes which have no meters reaches the staggering total of 26,000,000 gallons. This single source of waste costs the city more than a quarter of a million dollars annually and this sum does not take into account the leaks in a distribution system. Although the percentage of services metered is slowly increasing, seventy per cent still have no meters.

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The Numerous Friends of C. A. Dykstra will be interested to learn that he has resigned as secretary of the Los Angeles City Club to become director of the personnel and efficiency division of the department of water and power of the city of Los Angeles. For a number of years Mr. Dykstra has been the executive of civic organizations reporting on the activities of municipal officials. It seems that he will now be compelled to take some of his own medicine.

✻

Cost of Supplies.—Whether the commissioners of Hoboken, N. J., have acted upon recommendations made to them on December, 1925, by the Bureau of Municipal Research of the Chamber of Commerce we do not know. But certainly those commissioners were fortunate to have "An Analysis of the Cost of All Supplies and Miscellaneous Services of the 1925 Hoboken Municipal Budget" as a basis of their budget-making for coming years. This analysis, made under the direction of R. O. Huus, includes every department of the city government, item by item, comparing amounts for 1924 and 1925 budget and 1926 estimates, and shows the savings that might be effected. It is a very detailed piece of work that took months of time, and undoubtedly it is useful to the departments themselves as well as to the commissioners who are responsible for the final budget.—*Municipal Reference Library Notes.*

✻

Ohio Election Costs Too High.—According to the Citizens' League of Cleveland, Ohio spends each year more than one million dollars in excess of what is necessary to conduct her elections. In 1924 the total cost of elections in Cuyahoga county amounted to $1.74 per vote. In 1922 the cost of the election in Cleveland was $1.87 per vote as against $.77 in Buffalo and $.71 in New York state outside New York City. In 1924 registration in Cleveland cost $.35 per vote; in Milwaukee, under her scheme of permanent registration, the cost in the same year was 8.1 cents per vote.